FAMOUS ADVOCATES AND THEIR SPEECHES:

BRITISH FORENSIC ELOQUENCE, FROM LORD ERSKINE TO LORD RUSSELL OF KILLOWEN

WITH

An Historical Introduction

BY

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DEDICATION

TO

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BARRISTER-AT-LAW.

PREFACE.

THOUGH the classic eloquence of the English Bar has never wanted for admirers, but little, apparently, has been done to make the beauties of forensic oratory known outside any but a comparatively small circle. In the first place, the speeches themselves when fully reported are rarely to be found in a collection, but generally have to be looked for in scarce pamphlets, and more or less bulky memoirs. The many excellent text-books of English literature, giving, as they do, short lives of famous authors together with selections from, and criticisms of, their chief works, have no counter-part in the legal book-world. That this constitutes a great want, and one to be deplored, must be obvious. For in the first place, the most noteworthy speeches of eminent counsel, are not infrequently models of their kind, and real contributions to an important branch of literature. Then, such addresses, as often as not, embody principles of law, and facts of history and even of science, which cannot fail to be of great value to the citizen. And even where such facts and principles are not conspicuous or important, a speech by an orator of recognised ability is always a valuable lesson in the art of expressing one's ideas in

words. It is not too much to say that in these days when social intercourse has become so much more extended, and the number of topics for discussion so greatly increased, the faculty of speaking in public, at least intelligently, is an advantage that cannot be too highly estimated. In the following pages, the writer has endeavoured to treat of the subject of forensic eloquence, both from the point of view of biography and of example. Selections from some of the more famous addresses of the Bar, together with short memoirs of the orators, is the method adopted, and it is hoped that it will prove both interesting and efficacious. Unfortunately, many eminent names have had to be omitted—either through want of space, or because the speeches associated with them, as far as can be ascertained, have not come down reported in the first person—but no doubt the excerpts which have been chosen will be regarded as sufficient for the purpose of this work. The Historical Introduction, giving a Survey of Bar-Eloquence in England, which forms the first part of the book, has been written with special reference to law students, who may find some of the facts and remarks contained therein of practical use.

July, 1921.

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BRITISH FORENSIC ELOQUENCE.

HISTORICAL INTRODUCTION.

An Irish critic—presumably of the Rochefoucauld-Chamfort school—after enumerating the traditional troubles of his country, concluded by observing that not the least of these had been the plague of Oratory! Oratory, it seems, has added the evil of exaggeration to the pain of actual misfortune, but this pessimistic statement, like many others of the kind, loses much of its force on closer examination.

For Oratory, at its best, does but seek to clothe fact in the garb of vivid verbal description; and if that is to be regarded as an offence, then Literature itself must come within the indictment.

Legitimately used, eloquence, like all other gifts, becomes the vehicle, not the destroyer, of truth, and it is chiefly in the arena of the forum that its advantages in this direction are to be found. In the following pages the writer has endeavoured to trace the history of Bar-Eloquence in this country in modern times—touching here and there, as occasion demands, on those episodes and statutory enactments which serve to illustrate the subject and enforce its meaning.

Our early lawyers, it has been remarked, were not eminent for their eloquence, and it must be admitted that there was little to encourage the graces of address. No vigilant Press recorded their finest efforts. No admiring public crowded the galleries of the Courts. The most impressive utterances of the Bar were entombed in those prosaic records the Year Books and Reports.

The loss, however, need not be greatly regretted. If the veil of oblivion envelopes matters forensic till the period of the Revolution (1688), it at least shrouds from posterity something more than the wit and wisdom of intervening generations of pleaders. The speeches of advocates of the Tudor and Stuart periods were marked, as a rule, by a fierce bitterness, or, rather, savagery, hardly to be realised at the present day. If anyone interested in this subject be inclined to doubt the truth of this assertion, he has only to turn to the pages of the State Trials of the period or the lives of such jurists as Francis Bacon and Sir Edward Coke.

The real history of British Forensic Eloquence may be said to begin with Lord Cowper (d. 1723)—whose melodious voice still further enhanced an elocution described as perfect—and to have reached its full flood about the time that Lord Erskine quitted the ranks of the Bar for the Woolsack (1806). That heaven-born advocate flourished at a period when everything combined to favour the cultivation and success of legal oratory. A multitude of wrongs to be righted, the new ideas, political and social, of the French Revolution, the reactionary and repressive measures of a powerful ministry—all these facilitated the triumph of Erskine. No such conditions were prominently in existence to promote the address of Cowper, yet the lapse of more than two centuries has failed to dim the lustre of the great Whig lawyer, who—to follow the description of Lord Chesterfield—never opened his lips in public without universal applause, or failed to hold, as if spellbound, the hearts and understanding of his audience.

The compelling oratory of such advocates as those just mentioned may have given rise to the belief that a popular pleader need have but a scanty knowledge of law. Needless to say, such a notion is entirely false. Whatever be the brilliance of a speech, as such, its success must, after all, rest on a solid foundation of fact; in other words, a lawyer's reputation must be built upon real professional knowledge, ability and acquirements. His grasp of the principles of law must at least be sufficient, or few will employ him.

Cicero, the prince of ancient orators, took care to acquaint himself personally with the facts of every case submitted to his

consideration, and he supplemented this diligence by long hours of study and reflection. In his "Institutiones Oratoriae," Quintilian—that past-master of the rhetorician's art—has well described the painstaking care in the matter of detail that ensures the ultimate success of natural talent in the struggle for forensic fame.

The half-century which separated Lord Cowper from Erskine is by no means barren of orators of the first rank. Philip Yorke, Lord Hardwicke (1690-1764), brought to his speeches as Attorney-General a variety of learning and richness of illustration that made them among the finest specimens of their kind. Dunning, Lord Ashburton (1731-1783), caused his audience to forget the harshness of his features in the charm of the periods that rolled from his persuasive lips. Regarded, and justly, as one of the first forensic orators of the day, he was no less remarkable for the correctness of his diction. No rules of grammar were violated. The allusions—legal, classical and topical—were apt, and, moreover, the speaker was one of the most learned lawyers of Westminster Hall. As a brilliant contemporary, Serjeant Hill, once observed : " Everything that Dunning knows he knows accurately " !

But the undoubted legal light of this period was Lord Mansfield (1704-1793), whose graceful and fluent periods were universally admired. The technical part of the speaker's art he is said to have acquired from Pope, whom he always styled his Mæcenas, but so impressive appeared the combination of reason and imagination in the addresses of the future Chief Justice, that Sir Robert Walpole, who was not easily swayed by the higher feelings, compared on one occasion in the House of Commons, a speech of Mansfield's—in opposition to the Bill for punishing the City of Edinburgh in the affair of the Porteus Riot—to Cicero at his best, a judgment in which another contemporary, Pulteney, heartily concurred.

Leaving for a while the historical view of Bar-oratory, it may be convenient to consider here the psychological aspect of the subject. In the first place it must be clearly borne in mind that forensic eloquence is not always the counterpart of forensic ability. In short, the best pleaders at law are sometimes the worst pleaders in speech. Forensic ability is shown chiefly in

thinking decidedly and enunciating clearly; in knowing the rules of the Courts and the modes of procedure; in possessing a sound grasp of the common and statute law. Forensic eloquence, too, has its forms and amenities of diction; its intuitive perception of the opportunities and requirements of the moment; but these, unlike the principles of forensic ability, cannot be learned: they must exist native. No royal road leads to the shrine where the treasure of persuasion lies! The qualification of the successful Bar-orator, therefore, consists in the possession of these two gifts —ability and imagination. The former is evidenced by a solid grasp of the civil law and a knowledge of its application. The latter is proved by a clear perception of mind and the power of forcibly and logically stating a client's case. The whole requirement of the kind may be summed up in the words Sincerity and Truth, qualities which scarcely ever fail to produce their effect, especially in a Court of Justice, where the great object of investigation is professedly some matter of fact.

Not the least arduous part of an advocate's task is comprised in what has been called his handling of the jury. If rules can be given for this difficult and delicate mode of procedure, we may, perhaps, say they are summed up in the following principles: (1) A study of the character of the jury and a careful observance of the effect of the evidence upon them. (2) Care not to underrate their abilities or hurt their susceptibilities. Most people, be whatever their station or education, like to be given credit for knowing something, and, needless to say, a jury, duly called and sworn well and truly to try the matter in question, is no exception to the rule. At the same time, there must be no assumption of unusual information or intelligence on the part of the jury by the advocate. Whatever meaning he intends to convey must be made perfectly clear, and while on this topic it may be remarked that it is never safe to ply a jury, however seemingly, intelligent, with a multitude of arguments. Lord Abinger, one of the acutest advocates this country ever produced, gave some advice on the subject which is certainly well worth remembering. He took care when at the Bar to select the best argument for his client's case, and to drive it home with all the force at his command. Finally, and this is not the least important admonition to bear in mind, a pleader should never

tire the Court by repetition. When a barrister sees that a jury is beginning to weary of his remarks, let him bring his case to a close as speedily as possible. For, after an intrinsically bad cause, nothing is so fatal to forensic success as the resentment begotten of prolixity. But, while keeping in mind the susceptibilities of the jury, an advocate must not be afraid to convince them, if necessary, that what they already know of the case is not reliable. He should not hesitate either to review the arguments of his opponent, both the strong and weak points, carefully pointing out how these may be met, or at least showing in what they chiefly fail. For to ignore the reasons of the other side is as good as admitting that they are unanswerable.

A word as to Rhetoric. Eloquence, when a natural gift, is, of course, always a very great advantage to the possessor, but it is by no means essential to an advocate's success. Lord Russell of Killowen, regarded in his day as the greatest forensic pleader within living memory, gave it as his mature opinion that juries—at least those of this country—are not as a rule dazzled by rhetoric, but, like most common-sense persons, base their conclusions on solid facts. Still, there is in oratory, as in literature, a very considerable scope for the powers of the rhetorician. By rhetoric we do not mean here the ancient definition of that term—the art of discourse, or of persuasive oratory, though rhetoric is scarcely ever intended to be anything else—but rather that faculty of verbal description which presents the characteristics of everything with absolute clearness, and never wants for the proper word.

A rhetorician in this sense is an oral black-and-white artist. He indulges in no half-tones. All his heroes are without blemish. His aversions, both as to men and things, are painted in the darkest hues. To this school of partisan pleaders belonged Cobbett and Macaulay in literature, and Sheil, Charles Phillips and Edwin James in the law. But whatever may be said against rhetorical display on the ground of its frequent obvious unfairness, there can be no doubt that where bold, confident and energetic advocacy is required, rhetoric will usually prevail. As Plato and Cicero remind us, the real test of the orator, after all, is shown by the effect he produces upon his hearers. Such are a few of the abstract principles that underlie the art of rhetoric.

Before resuming the subject of the later history of advocacy

in this country, it may be advisable perhaps here to consider briefly the question of its morality.

Gulliver, when in the land of the Houyhnhnms, told his master, the grey horse, that there was a society of men in his country bred from their youth in the art of proving by words multiplied for the purpose that white is black, and black white! What the sardonic satirist wrote in the Augustan age of the Queen "who sometimes counsel took and sometimes tea," was echoed in paraphrase by the Viscount de la Haye-Cormenin in the splendid epoch of Napoleon III.: "Where is the advocate to be found," asks the great publicist, "who has any fixity of principle, after having spent years of his life over truth and falsehood?" ("Etudes sur les Orateurs Parlementaires"). But the satirist and publicist are both wrong. An advocate is not bound to undertake any particular cause; still less to defend a bad one. In the words of Quintilian, he must not make his profession "a port of refuge for pirates."

The illustrious Chancellor D'Aguesseau adds: "Never pride yourself on the miserable honour of having thrown obscurity over truth!" Bearing in mind these remarks and the further one of Sir Matthew Hale, that the legal profession never necessitates a man making a thing appear worse or better than it is, we may pass on to what appears to be the real gist of the question. The Abbé Gury lays it down that while no lawyer can in conscience undertake obviously bad causes in *civil matters*, the case is different where criminal defence is concerned. In this latter sphere, the advocate injures nobody, and he is, moreover, bound by the nature of his office to defend the accused (*Theologia Moralis*, vol. ii.). The soundness of this general principle receives an additional force in this country, where for generations the law, theoretically, at least, has presumed an accused person to be innocent until judicially proved guilty. The separation in this country of the legal profession into barristers and solicitors tends strongly to make the national advocacy singularly impersonal—an advantage to lawyer and client which cannot be too highly estimated. A barrister, as a rule, does not come into personal contact with his client. He receives his instructions from the solicitor, and so appears in Court in the light of a third person.

Hence, the arguments he puts forward have an air of candour and disinterestedness which would be wholly wanting under more personal and partizan-like conditions. Most barristers who have ventured to interview their clients, especially in criminal cases, have usually repented of having done so, for not infrequently they have resumed the defence with the almost certain knowledge that they championed a guilty cause.

It may with confidence be asserted that no change in the custom or procedure of the Courts ever gave so powerful an impetus to fearless and eloquent advocacy in the country as the Act of 1836 abolishing the long-settled rule at common law forbidding the counsel of persons, indicted for felony, to address the jury.

Though the history of the Bar before the time of Edward I. is very obscure, it appears that until the reign of Henry I. (1100—1135) persons tried for every species of crime in England were entitled to make their defence by counsel (Stephen's Commentaries IV., p. 515 note, 4th ed.). How this excellent constitutional and personal safeguard came to fall into desuetude is a mystery. It is even more remarkable, not to say disgraceful, that our Bar and the public at large, during so many centuries, suffered a rule to be maintained that was at once so detrimental to life, fortune and reputation. The long existence of this great legal and social injustice is all the more surprising as there were not wanting at various periods of our history lawyers and publicists of eminence to point out the gross unfairness of such a condition of things. Thus, during a debate in the Long Parliament in November, 1649, Mr. Commissioner Whitelock remarked: "I confess I cannot answer this objection that for a trespass of sixpence value, a man may have a Counsellor-at-law to plead for him, but where his life and posterity are concerned, he is not admitted this privilege and help of lawyers. A law to reform this would be just and give right to the people."

The hardship of the then existing rule appealed even to Jeffreys, who, we may suppose, was not inclined to quarrel with things as he found them. In the case of Thomas Rosewell, a dissenting minister, indicted for high treason in 1684, his Lordship remarked: "That he thought it a hard case that a man should have counsel to defend himself for a twopenny trespass and his

witnesses be examined on oath, but if he stole, committed murder or felony, nay, high treason, where life, estate, honour and all were concerned, that he should neither have counsel, nor have his witnesses examined on oath." (Howell: "State Trials," vol. x., p. 207).

This great national scandal, however, lived on despite the protests of the Senate and the Bench. The Act of 1695 (7 Will. III. c. 3), allowing counsel to persons accused of high treason, marks an epoch in the history of forensic pleading, and public liberty, but even this slight measure of relief was passed with difficulty and clogged by several restrictions. The accused was indeed permitted to make full defence by counsel learned in the law, and to have a copy of the indictment and a list of the jurors. But it was specially laid down that the Act should not apply to Parliamentary impeachments or any case of petty-treason, such as coining, husband-murder and the like. Moreover, the operation of the measure was strictly confined to the day fixed for it to come into force. Sir William Parkyn, who was indicted for high treason the day *before* the statute was to come into operation, was curtly refused counsel or even the privilege of having his trial postponed so that he might benefit by the new Act. It is noteworthy that the presiding Judge on this occasion was Sir John Holt, so profusely eulogised by Macaulay as an ornament of the Bench, and the firm friend of constitutional and individual liberty, but in acting as he did it is not unlikely that his Lordship was only carrying out the instructions of the Government, which was fully determined to stamp out the machinations of the rising Jacobite party with the utmost severity, and make a severe example of any of its active supporters that should be convicted of attempts to restore the dethroned monarch.

It was perhaps fitting that a benefit so ungraciously granted, and thus grudgingly applied, should have been received at the outset with such little enthusiasm by the Bar. The first case of treason under the new law was that of Ambrose Rookwood and others for conspiring to seize or assassinate William III. (1696). The defence was led by Sir Bartholomew Shower, who, though "reputed long for strength of lung and pliancy of tongue!" as Garth assures us, apparently failed on this occasion to live up to his reputation. Not only was his address to the jury common-

place in the extreme, but the great advocate even thought fit to apologise to the Court for appearing for the prisoners at all! After this the reader will not be surprised to learn that the accused were convicted, and duly made their exit beneath the fatal shade of Tyburn tree.

The pall of timid reserve and uninspired dullness which hung over the Courts at this period and for long after was not easily to be dispelled. The speeches of counsel on behalf of the Jacobite prisoners of 1715 and 1745, notwithstanding the romantic circumstances of the occasion, are in perfect accordance with the spirit of an age that rather prided itself on its lack of enthusiasm. The strenuous efforts of the Long Robe on these occasions were usually exerted to establish aliases and alibis, or to demonstrate coercion by chiefs and lairds. In the ordinary criminal trials at the Old Bailey and the Assizes, counsel, being debarred from addressing the jury on behalf of persons indicted for felony, turned their attention to such legal resources as the discovering of flaws in indictments and the discrediting of witnesses. All indictments during this period had to be drawn very carefully, and with a due appreciation of correct wording. Thus, if the indictment merely stated that the accused *killed* instead of *murdered* the deceased, or if his names were incorrectly given, or if any of the Christian ones were omitted, or if the facts, as described by the evidence, differed from the description of them in the indictment—all these were held to be fatal to the prosecution. However scandalous these subterfuges appear to us at the present day, it must be remembered they were often the only resources left to the unhappy prisoner in his fight for life against the powers of the law and a ferocious penal code that contained nearly two hundred offences punishable with death. The Judges themselves were so conscious of the great disadvantage of the accused that, in the less serious cases, they, as a rule, strained every point to give the wretched occupant of the dock the full benefit of these expedients. Thus, at one of the country assizes a labourer was charged with stealing a *slop*. The facts were clear, but the prisoner, when called upon for his defence, said: "Why, my Lord, it ain't no slop!" "You hear what he says, gentlemen," remarked the Judge to the jury. "Is it a *slop*, gentlemen?" "No, my Lord it's a *smock*," replied one

of the jurymen. "Then you must acquit the prisoner," said the Judge, only too pleased of the excuse. But another indictment had been preferred charging the prisoner with stealing a *smock*. The accused, nothing daunted, now called witnesses to prove that the article in question was really a *slop*! Both Judge and jury took the same view, and the shrewd labourer left the Court a free man. But such a system, whatever the grounds for its existence, was of course utterly bad, and calculated to defeat rather than promote the ends of justice. Towards the close of the eighteenth century the conscience of the judiciary appears to have awakened to the evils arising from the practice, and henceforward immaterial details were only required to be stated, not proved. At the trial in 1781 of Captain "Ring" Donellan for the murder of Sir Thomas Broughton, the prisoner's counsel sought to upset the indictment by objecting to the poison used being described as *laurel water*, and not as prussic acid. The presiding Judge, however, overruled the objection, and the captain was convicted and executed. (Sir Roland Knyvet Wilson: "Modern English Law," chap. iv.)

In view of the spirit of the age and the very restricted sphere of legal advocacy, it is not to be wondered at if forensic eloquence during this period was at a low ebb. Even so universal a scholar and profound a jurist as Sir William Jones, in regretting the neglect of Bar-oratory in his day, thought it incumbent on him to deprecate the notion of popular eloquence as something not altogether becoming the grave atmosphere of the Courts (Roscoe: "Lives of Eminent British Lawyers"). But the dawn of better days was in sight. The Gothic revival, thanks to Horace Walpole and Mrs. Anne Radcliffe, among others, was dispelling the cold classical formalism of the age and awakening in men's minds wider interests and deeper sympathies. The good sense of Lord Mansfield, the Lord Chief Justice, was slowly but surely ridding the Courts of a mass of almost meaningless verbiage and uncouth jargon. The commentaries of Mr. Justice Blackstone were investing the national jurisprudence with the graces and beauties of elegant literature. Everything, indeed, was preparing the way for a golden age of forensic eloquence, but before entering the promised land of lofty thought and refined diction it will be only just to consider first an act of the Legislature

which undoubtedly had its share in widening the sphere and developing the latent powers of Bar-oratory. We refer to Fox's Libel Act of 1792. This important measure virtually placed the freedom of the Press under the protection of juries by permitting them to determine what constitutes a libel as well as the fact of publication. Up to this time, what actually constituted a libel had been considered as a matter for the ruling of the Judge alone. The opportunity this statute afforded counsel of making vehement and rhetorical addresses in the defence of the liberty of the subject and the rights of fair speech and comment was quickly taken advantage of, and to its influence we owe not a little of the splendid eloquence of such advocates as Erskine and Mackintosh, Phillips and Brougham.

The cause of effective oratory also received a powerful stimulus by the second Catholic Relief Act admitting Catholics to the Bar. Finally excluded from the profession by one of the many new penal laws introduced at the period of the Whig Revolution of 1688, Catholics had still continued to frequent the Inns of Court, where they appear to have initiated, or at least perfected, a new and highly lucrative branch of practice—Special Pleading. The names of Mathew Duane, Maire and James Booth stood high in this branch, as well as in that of conveyancing; but the Oath of Supremacy exacted from every aspiring barrister at his "call" effectually excluded the conscientious Catholic from the honours and emoluments of advocacy. Among the clauses of the Relief Act was one permitting Catholics to be called to the Bar without the necessity of taking the anti-Papal subscription, a boon which is said to have been introduced into the Bill when passing through the Commons by no less a person than the Attorney-General, the famous John Scott, the future Lord Eldon. As a struggling law-student he had been greatly assisted by the above-mentioned conveyancer Mathew Duane, who gave him the run of his chambers, and he was also the personal friend of another eminent Catholic lawyer, Charles Butler. Mr. Butler had long been a member of Lincoln's Inn, where, thanks to his influential friend's kind offices, he was now called to the Bar (1791), receiving on this memorable occasion the hearty congratulations of the Benchers, to whom, as to the rest of the profession, he was already well known for his able essay on Fearne's "Contingent

Remainders," and his high legal attainments generally. Similar Acts were passed in 1793 for the benefit of Irish and Scottish Catholics, and it may be remarked that nowhere was the liberality of the Legislature more highly appreciated than in Ireland, "where the title of Counsellor marked a distinct privilege of the Protestant ascendency, was a grade in itself, a dignity guarded by the laws of the land, and an assurance of personal gentility." ("Centenary Life of Daniel O'Connell.") Not a few of the younger generation of Catholic gentlemen in Ireland hastened to qualify for the forensic robe, and soon the Courts resounded with the eloquent periods of such historic pleaders as O'Connell, Sheil, Wolfe and O'Loughlin.

The historic impeachment of Warren Hastings for oppression of the Hindoos and for conniving at the plunder of the Belgiums or dowager-princesses of Oude, which dragged its slow length from 1788 to 1795, is now chiefly remembered for the splendid scenes of its pageant-like opening, so vividly and fitly described in Macaulay's brilliant page. The student of forensic eloquence will moreover regard it as a striking example of the effective use of rhetoric, and that, too, in a case which promised at the outset to be but a jejune succession of Blue-book extracts and official reports.

The speeches of the managers, Burke, Sheridan and Fox, detailing the high crimes and misdemeanours of the illustrious defendant, produced an almost incredible sensation. That, in an age when sentiment held firm sway over every female heart, society ladies should have fainted as they heard Sheridan perfervidly declaring that the records of history presented no greater delinquent in this particular sphere than the prisoner at the bar, may be readily understood. But that sobs and groans should have echoed from every part of the hall, crowded as it was with self-restrained lords, lawyers and politicians, and sophisticated men of the world, is indeed a wonderful tribute to the moving power of language and the emotions that may be aroused by the circumstances of occasion. Thurlow, the grim Chancellor, whom his contemporaries compared to Pluto, openly told the peers that many who had listened to Mr. Burke's speech would probably never recover from "the shock it had occasioned," and that if the crimes alleged against the defendant could be proved, "no

punishment their Lordships could inflict would be adequate to his guilt."

During the course of 1788 the centenary of the "Glorious Revolution" was celebrated throughout the country with all the intensity that follows in the wake of a wave of enthusiasm. The promoters of the event little dreamt that they stood on the brink of another and greater revolution, which was to shake not only thrones but the world itself. Not a few reflecting persons, too, considered that the praise which was poured forth on this occasion, even on a turning-point in our history, was scarcely justified by existing facts. The country, it is true, possessed not merely the elements but much of the development of constitutional rule, but these were marred by blemishes which would now be considered as intolerable abuses. In the first place, but a fraction of the people was represented in the House of Commons, to which scores of green mounds and half-ruined villages might return members, but not populous and rapidly increasing centres such as Birmingham and Leeds. A movement for Parliamentary reform, not yet five years old, was already in the process of being sent to sleep till the turbulent awakening of 1830—2. The Civil Service, with some notable exceptions, was one vast field of jobbery, corruption and favouritism. The path of promotion in the Army and Navy was practically closed to the rank and file, while discipline was enforced with a barbarity of which we can scarcely conceive. The Criminal Code prescribed the gallows for nearly 200 offences, many of them of a trivial character. The whole standard of life, despite much exterior magnificence and apparent refinement, was coarse and demoralised, though signs of amelioration in this, as in much else, were not wanting to the times. Still, the civil polity of the nation, if it resembled in some degree a fool's paradise and supplied the illusions that inspired so much of the complacent after-dinner oratory of the public celebrations of 1788, was in many respects far better than the old regime of France. This was, indeed, acknowledged by Turgot, Necker, and the other philosophic statesmen who had essayed to stave off the cataclysm by schemes of widespread retrenchment and reform. Hence, the fall of the Bastille

and the conversion of the States-General into the National Assembly were regarded in this country as the commencement of the political and social regeneration of a great, if hostile, people.

This sympathetic sentiment was soon to undergo a complete change. As the French Revolution more and more forsook the path of ordered reform, and entered the wilderness of anarchy and bloodshed, the upper and middle classes of this country naturally ceased to smile on its endeavours. Its friends on this side of the Channel became a confused mass of Utopian theorists, disaffected sectaries and disappointed Whigs, and when the Jacobin leaders openly avowed their intention to fly to the aid of these "brothers" and plant in the soil of Albion fifty thousand trees of liberty! the war which was to desolate Europe for over twenty years may be said to have begun. Though England, as Knight remarks (History, vol. vi.), was never probably in so royalist a humour as at this period, the malcontents in her midst were not long in making their presence felt. "Corresponding Societies" for the dissemination of Paine's "Rights of Man" and the principles of the continental revolution were established in London, Edinburgh and all the chief cities of the kingdom. Speeches subversive of the monarchy were nightly delivered in these assemblies, and it was clear that in many quarters nothing less than an armed rebellion was in contemplation. On the 16th of May, 1794, Pitt moved for the suspension of the Habeas Corpus Act, which Burke, with the blushing honours of his "Reflections" thick upon him, supported in a speech of splendid eloquence, as the best, nay, the only, means of preventing "the vast and imminent dangers with which we are threatened." The Bill was carried by enormous majorities.

Nor was this the only step. The Government promptly arrested the chiefs of the "Friends of the People," among whom were included Lord Mahon, son of Earl Stanhope; the Rev. Jeremiah Joyce, a clergyman of the Established Church; and John Horne Tooke, the political pamphleteer. On the 6th of October, 1794, true bills were found at the Old Bailey against Thomas Hardy, Horne Tooke, John Augustus Bonney, Jeremiah Joyce, John Thelwell and seven other persons for high treason. By both friend and foe the occasion was felt to be a momentous one. The proceedings were a trial of Warren Hastings over

again, but with far wider issues, and with something of the pomp and circumstance which had made the splendid tribunal in Westminster memorable for all time. Three Judges in scarlet and ermine, and accompanied by the civic dignitaries in their robes of state, presided over the Court. An imposing array of counsel, whose sombre gowns of silk and stuff contrasted strongly with the resplendent colours of the Bench, filled the body of the hall. Crowded galleries of spectators within, and vast multitudes of excited people outside the Sessions House, testified to the almost frenzied interest evinced by the public in the Government prosecutions.

In selecting, as they did, Thomas Hardy to be the first to stand his trial, the Government undoubtedly showed much shrewd discernment. The accused was the secretary of the "Corresponding Society," and a very active agent in the propaganda of its principles. The indictment against him was a most formidable one, amounting to no fewer than nine charges of overt acts of treason. The opening speech for the prosecution was delivered by the Attorney-General, Sir John Scott, the future Lord Eldon, who, in an address of nine hours' duration, detailed much that told most seriously against the prisoner. Many documents of the "Corresponding Society" were read in Court, and some of these contained principles which, if carried into practice, would probably have set up in this country something akin to the Jacobin disorders which were covering France with horrors. The prisoners had retained as their leading counsel Thomas Erskine, whose efforts on this occasion gave him the right to be regarded as the Demosthenes of the English Bar. Himself of noble extraction—he was the son of the tenth Earl of Buchan—his early years had been spent as an officer in the Navy and afterwards in the Army as a preliminary to assuming the forensic toga. Like many another barrister, before and since, he did not shine as a Parliamentary speaker, though one at least of his speeches in the Commons, with reference to the harpies who batten on the ill-gotten profits of a protracted war, is a masterpiece of scathing denunciation, and one which would seem to apply with awful appropriateness to the same notorious evil at the present time! The following is one of the passages: "But at the conclusion of ten years' war how are we recompensed for the deaths of multitudes

and the expenses of millions but by contemplating the sudden glories of paymasters and contractors and commissaries, whose equipages shine like meteors and whose palaces rise like exhalations!" His speech in defence of Hardy was a piece with this outburst, though, as is the case with all consummate orators, his force and beauty of language were mingled with the hard logic of fact. After reviewing, in his own surpassing way, the evidence against the accused, Erskine reminded the Court that there was not one circumstance of any weight that could be said to incriminate his client. The proceedings and opinions of the "Corresponding Society," however objectionable some of them might be, were all perfectly open, and had already been reported in the newspapers. The aim of the movement had been not revolution but reform, that very reform which but a few years before had been put forward by the Prime Minister himself as a desirable object of public domestic policy. The prisoner was acquitted amid transports of tumultuous joy, which is said to have surpassed even the enthusiasm which greeted the historical vindication of the Seven Bishops, but it was at this juncture that Erskine showed how little there was of the demagogue in his noble nature. Leaving the scene of his forensic victory, the champion of the people went outside and addressed the seething multitudes, reminding them, in language no less impassioned than that he had but recently employed in addressing the jury, that the laws of England were, after all, the best guardians of public liberty, and that any outrage or unseemly demonstration on this occasion conld only terminate in throwing discredit on a righteous cause. The effect of this harangue was instantaneous. The crowds dispersed, and so rapidly that within a short space of time the streets near the Old Bailey appeared to be deserted.

Erskine's genius did more than ensure the safety of a well-known publicist. It brought about the almost immediate collapse of the prosecution which, had it succeeded, would have been followed by the execution of the accused and the probable resort to open rebellion, which almost all persons with anything to lose so greatly feared. Tooke, who was the next to be indicted, conducted his own defence with the ingenuity and brilliancy to be expected of so able and sarcastic a man. He followed the main lines of argument adopted by the great

advocate in the case of Hardy, and with the same happy result. Thelwell, too, was declared not guilty, and, no evidence being offered against the other prisoners, these were formally acquitted and discharged.

It may, perhaps, not be amiss to consider here the subject of legal education in its traditional aspects and its effect on forensic eloquence. Even such an enthusiast for his profession as the late Mr. William Forsyth, Q.C., frankly admitted that the technicalities of English law are unfavourable to oratory, and we think that few will be disposed to contradict the truth of this assertion. The very nature of eloquence requires a field free of all obstacles that may resist its range or cramp the imagination—a condition not often to be found where advocacy in concerned. The comparatively simple laws of ancient States have, under the complexity and widespread demands of modern legislation, become an unwieldy mass of statutes and municipal regulations the principles of some of which enter into almost every particular law. This is certainly the case as far as the civil side of the Courts is concerned, nor are the criminal tribunals free from the restrictive tendencies of modern jurisprudence. These conditions, however, are not entirely due to legislative enactments. Not a few of the capital charges heard during recent times at the Old Bailey and the assize courts have involved the most elaborate scientific research on behalf of both prosecution and defence, and it speaks highly for the abilities of counsel engaged on either side that their speeches, notwithstanding the greatly increased difficulty of the situation, have been, for the most part, masterpieces of their kind—some of them indeed worthy to rank with the finest specimens of classic Bar-oratory. The somewhat informal nature of professional education in the Inns of Court, which still flourishes to a certain extent, in spite of the revived "Readings" and ever increasingly severe examinations, has not been without its effect on the training of the future advocate. From about the time of Charles II. the chief part of the legal tyro's instruction has consisted in reading in the chambers of a barrister, conveyancer, or special pleader. In these sombre surroundings, with their old-world associations and peaceful, if severe, seclusion, the novice has opportunity to observe the course of current practice and also benefit by the

experience and advice of his principal. The student, moreover, has abundant time for his own private reading and that habit of reflection which is so conducive to training the imagination.

It has, we know, been long the fashion to regard the pre-examination days of the Bar as the age of dilettantism and cultured idleness, when the hours of so-called "reading in chambers" were really passed in vapid conversations about sport and stage beauties and the fleeting topics of the passing hour. Much truth is mingled with the description, but the case has its redeeming side. Whatever may have been the behaviour of the idle many, a large proportion of bar-students have ever been famous for their steady application. Sir John Eardley Wilmot, Chief Justice of the Common Pleas (1709—1792), as a student prosecuted his legal studies with diligence. Thurlow, whom Fox compared, not inaptly, to Pluto, was to be found close at study each morning in the Temple. Sir William Jones, the Orientalist (1746—1794), when keeping his terms, read Blackstone most attentively, and filled his common-place books with useful annotations.

Though Lord Eldon, another drudge of a student, used to say that lawyers had been made cheap by learning law from Blackstone, and personally avowed his preference for Coke upon Littleton, which, as a student, the "doubting" Chancellor abridged for his own use, there can be no doubt that the immortal "Commentaries" did more than merely diffuse a good general knowledge of English law. The elegance of their style enriched the vocabulary of the Bar, and so may be said to have influenced in a very high degree the oratory of the Courts, which from this time forward became increasingly ornate.

The opening of the Bar to Catholics, as before remarked, naturally attracted to the profession many young Irishmen of great talent, and the Courts over here certainly gained in eloquence. Ireland then stood confronted with two political issues, each of which greatly stimulated the natural propensity of the sons of Erin to florid address—Catholic Emancipation and the proposed Act of Union. Both these measures stirred the nation to its very depths. The Union, which Pitt honestly thought would in course of time produce the same results in Ireland as those of the Scottish Act of 1707 in the case of the

Northern Kingdom, was by no party more fiercely opposed than by the Irish Bar. Curran, Plunket, Ponsonby, Saurin, Burrowes and Bushe—to mention but a few leading names—exerted all that eloquence and patriotism could effect against a measure which deprived Ireland of a local legislature and a place among the nations of the earth. If these efforts were not crowned with success, neither were they altogether in vain. The impassioned speeches of the hour awoke a deeper sentiment of patriotism and inspired a new and powerful phase of national literature. Dublin, too, became a great school of oratory, in which all the graces and treasures of language, intellect and learning were united to sway or to convince. If the Parliament of Ireland passed away from College Green, its fall also ushered in the golden age of forensic address.

Most of the brilliant meteors which now arose were for the most part destined to shine in the firmament of the sister isle. But Ireland did give one of her sons permanently to the Bar of this country, whose influence has left its mark on succeeding generations of orators. We refer to Charles Phillips (1787—1859). We have always regarded him, in a sense, as the father of all the impassioned pleading, as distinct from mere professional advocacy, that has since enlivened the usually prosaic atmosphere of our Courts. Phillips, unlike most of his countrymen who about this period aspired to forensic fame, was a Protestant, but of that liberal school which smiled approval (with Sidney Smith) on Catholic Emancipation, and blended Whig politics with the fine scholarship and social amenities within the aristocratic circle of Holland House. Phillips's Bar-oratory created a kind of furore in Ireland, even in that palmy age of eloquence, and so overcome was a Dublin jury on one occasion by the counsellor's gorgeous flights that an erroneous verdict was returned, to the intense relief of a Court on the verge of tears. The result of this trial (*Guthrie* v. *Sterne*) determined Phillips to go to the English Bar, to which he was called at the Middle Temple in 1821, and he eventually acquired a very large practice.

His fine intonation, handsome figure and great powers of cross-examination made him a prime favourite at the Old Bailey and the London Session, but, like many other popular advocates, his knowledge of law is said not to have been of a high order. Indeed,

a Dublin solicitor on one occasion exactly described the famous advocate's reputation in this respect by remarking, with reference to a case in which he was engaged : " Oh, I've retained Phillips for the *passions* and McNally for the *points* !"*

Phillips, though he created a new era in Bar-oratory and was declared by Christopher North to be " worth a dozen Sheils," did not escape the sharp criticism of some of his English colleagues. Sir James Mackintosh, who had himself won no small distinction in the Courts as a fluent and able speaker, described the oratory of the newcomer as " pitiful," while Brougham (who was probably jealous), in replying to Phillips in some case of libel, nearly ruined his opponent's efforts by referring to the " horticultural address of my learned friend " ! But there can be no doubt that Phillips possessed real, and even amazing, powers of eloquence, and not even the lapse of well-nigh a century can rob his printed speeches of the tempestuous force and resplendent beauty which once astonished and captivated an entire generation.

It must be admitted, however, that it was an instance of the hour and the man. Phillips and the rest of the Bar at that period had the great advantage of flourishing in an age favourable to the stirring of the emotions. The long French War had been succeeded by a scarcely less momentous struggle—though happily an almost bloodless one—in the political and social sphere. Catholic Emancipation, Parliamentary Reform, the lamentable conditions of the factories, the working classes and the criminal code were not topics that could be discussed coldly by either friend or foe. The writings of Sir Walter Scott in revealing to an astonished world the mysticism and weird glamour of the Middle Ages had freed the imagination of countless readers and thinkers from the long bondage of classical formality. The melting melodies of Moore and the fiery muse of Byron, sung or recited in innumerable drawing-rooms, awakened a host of generous sympathies in spheres little accustomed to enthusiasm of any kind. The Courts of law could not but imbibe the general

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* This McNally was Leonard McNally, author of the well-known song, " The Lass of Richmond Hill." He defended Robert Emmett at his trial, 1803, but has been accused of gross treachery to the Irish cause.

spirit which soon shone forth in speeches and addresses of the highest excellence.

From about the period of the State Trials of 1794, already described, the Old Bailey had been steadily growing in jurisdiction and importance. The Court-house itself, which, with the prison, arose from the ashes of the Gordon Riots of 1780, was considerably enlarged in 1809 by the addition of the site of Old Surgeons' Hall, and, altogether, formed a palace of justice in at least favourable contrast with the dingy superior Courts of common law which clustered around William Rufus's glorious hall at Westminster. Another great step forward was the Act of 1834 constituting the Old Bailey the "Central Criminal Court," with a jurisdiction extending not only over all London and Middlesex, but the suburban portions of Kent, Surrey and Hertfordshire, and even during the months from October to January making it the Assize Court for Surrey as a whole.

The trials at the Old Bailey, too, have always assumed something of the nature of a pageant. The Lord Mayor and Aldermen in their furred robes and chains of office, who attend as part of the Commission of Oyer and Terminer—his Lordship of the High Court in scarlet and ermine, the Sword of State above the Judge's chair, the gaily-coloured bouquets on the bench—all go to impart that blend of colour so pleasing and picturesque a relief to the drab background of modern life.

When the news of Waterloo arrived in England, and Londoners read with pride how the Household Cavalry had vanquished in a fierce Homeric encounter Boney's tough Cuirassiers, a waggish gourmet exclaimed exultingly that roast beef and plum-pudding had proved more than a match for steel corselet and *soupe maigre*. In the same facetious spirit it may be asked if the once famous Old Bailey dinners during the sessions did not tend indirectly to stimulate the florid style of oratory which so long distinguished the advocacy of the Central Criminal Court. Two of these repasts were supplied daily at the expense of the Sheriffs, and the course always comprised a plentiful supply of beefsteaks and marrow-puddings, accompanied, needless to say, by no stinted tide of port and sherry. The very thought of marrow-puddings and rich old City port would suffice, we imagine, to make eloquent the tongue of even the dullest proser, and

certainly the heyday of these feasts was precisely the period when rhetoric most flourished in the historic halls of civic justice. But the dinners proved a costly burden to the providers. The lawyers, like the rest of the community, took to abstemious living and mineral waters, and the marrow-puddings, with the dinners, became mere epicurean memories about 1877.

The spirit of the age, the pomp and ceremony, the generous dining and wining, no doubt all contributed to the expanding of ideas and the awakening of the emotions, but these were all as nothing compared with the ever-memorable Act of 1836, which gave a substantial measure of justice to a large class of accused persons and afforded the Bar a greatly extended sphere of professional practice, together with enormous opportunities for forensic display. We refer, of course, to Mr. William Ewart's Act allowing persons indicted for felony to make full defence by counsel. The unjust state of the law on this subject has already been remarked upon (pp. 7 and 8) and need not be repeated at length. Blackstone in his Commentaries, and Judges such as Baron Garrow, in their charges to grand juries, had animadverted upon the long-standing abuse. Grand juries themselves had more than once pointed out the propriety of allowing the benefit of counsel in cases of felony, and a Bill had been presented to the House of Commons to end the long-standing injustice by Mr. William Martin—"Humanity Martin"—well known for his successful efforts to protect animals from wanton cruelty. But it was not until 1836 that the matter of allowing counsel to persons accused of felony was seriously taken in hand. Mr. William Ewart, member for Liverpool, and one of the foremost of those who sat at the feet of Bentham, introduced a Bill for the purpose of allowing every person on trial for felony to make full defence by counsel learned in the law, as in the case of indictments for high treason and misdemeanour. The proposed law received a cordial hearing. O'Connell spoke strongly in its favour, alleging several instances where a speech from counsel would have saved the accused from unmerited conviction, while Sir Frederick Pollock, afterwards the eminent Lord Chief Baron, described the existing state of things as "a disgrace to the country." The Bill went up to the Lords with a great majority, and in the Upper House its reception was no less favourable.

The Lord Chancellor, Lord Lyndhurst, spoke of the measure as just and reasonable in all its principles, and reminded their Lordships that England and Ireland were the only countries in Europe where counsel was denied persons accused of serious crime. Lord Denman, the Lord Chief Justice, heartily concurred, and gave some astonishing instances of cases where counsel was allowed, and of others where the same benefit was withheld.* The Bill, as it stood, gave the prisoner's learned counsel the right to the last word on all occasions, but this the Peers thought too great a privilege. On the advice, it seems, of Lord Abinger, they altered this part of the measure to those cases where no evidence to matters of fact was called by the defence. The Commons were at first disposed to reject this amendment, but finally came round to the opinion of the Attorney-General that it was better to accept the proviso, rather than jeopardise an excellent and far-reaching reform which gave every accused individual the right of full defence by counsel. The Bill therefore passed into law, and that the Lords' amendment was a wise one may perhaps be concluded from the fact that no subsequent Government, whether Conservative or Liberal, has shown any disposition to set aside the arrangement agreed upon in 1836.†

The first trial under the new conditions was apparently that of James Greenacre for the murder of Hannah Brown—a gruesome crime of the "horror" variety. Despite the cunning of the accused, and the efforts of his counsel, the prisoner was convicted and executed in front of Newgate amidst the execrations of an immense mob. The "Greenacre murder" appears to have directed public interest to the Criminal Courts, which were now elevated to a higher plane of dignity and importance. Though it had long been the fashion to sneer at the Old Bailey Bar "as

* His Lordship referred to an indictment for counterfeiting a sixpence, which was a misdemeanour, but did not deprive the accused of making full defence by counsel. If the indictment was for counterfeiting *two* sixpences, this was felony, and the accused could not have counsel to address the jury!

† In addition to the case of evidence to fact cited above, the defence is also deprived of the last word when the prosecution is conducted by the Attorney or Solicitor-General in person. So jealously is this latter practice guarded by the law officers of the Crown that in no instance has it been waived, even when—as on the occasion of the Pimlico poisoning trial, April, 1886—the learned counsel for the prisoner has promised that such a concession shall not constitute a precedent.

notoriously the most ignorant men in their profession," the accusation, whether true or false, ceased at least about the third decade of the nineteenth century to have even a show of reason. The vast and unwieldy nature of English law has long necessitated those who aspire to practise it specialising in one or other of its departments. No advocate, however high his talents, can hope to excel in all branches of jurisprudence. The Prisoner's Counsel Act and the increasing subtlety and complexity of crime had the effect of ultimately attracting to the Old Bailey a better class of practitioner than had hitherto been the case. A criminal trial henceforth meant a real conflict of legal talent. The counsel for the defence might not infrequently find himself opposed to no less a personage than the Attorney or Solicitor-General, while the prosecution had now to contend against the acumen of trained minds and have its arguments and the evidence adduced more or less severely criticised in speeches often of the highest excellence. All this certainly impressed the outer world and made the Central Criminal Court a battle-ground of the wits and a theatre for the display of the most eminent legal talent. A trial of great public interest at the Old Bailey became an event of the first importance in the social sphere, and the dismal purlieus of Newgate were periodically enlivened by the colour and presence of a large, and occasionally aristocratic, assemblage.

The climax appears to have been reached in June, 1840, when François Courvoisier, a Swiss valet, was indicted for the murder of his master, Lord William Russell, at his house in Park Lane. The illustrious family and diplomatic services of the victim, the air of mystery surrounding the crime, the eminent advocates retained for the trial, all combined to make the occurrence one of great public interest. The scenes at the Central Criminal Court recalled those of the Treason Trials of nearly half-a-century before. Peers and peeresses, ambassadors and persons of distinction in almost every profession crowded the narrow galleries, and even invaded the sacred precincts of the Bench. Charles Phillips, who on this memorable occasion led for the defence, had certainly a splendid audience before which to exercise his surpassing talents of persuasive pleading. His address to the jury, though very eloquent, was unable to rebut the deadly logic of hard facts, and the prisoner was convicted and executed.

The brilliant orator, too, came very near involving himself in serious trouble with the Benchers of his Inn for making a statement in his speech which he was believed to have known to be untrue, and for further aggravating the offence by endeavouring to fix the guilt upon another person. As the alleged delinquency, however, was by no means clear, allowances were rightly made for the excitement of the moment, and after some controversy in legal circles and in the newspapers on this subject and forensic ethics generally the incident was allowed to drop. But the matter serves yet again to illustrate the profound wisdom of that custom of our Bar which discourages to the utmost the personal contact of counsel and client in criminal charges as likely, as a rule, to have nothing but embarrassing results.

The fashion which sought to convert sensational criminal trials into society functions, which set in after 1836, was happily of short duration. The vogue, though it still to a certain extent obtains under very modified circumstances, was thoroughly bad, ministering, on the one hand, to the notorious vanity of criminals, and, on the other, giving rise to a vicious mode of forensic address. The fact that large numbers of persons, many of them of the first rank and distinction, should periodically attend the trials, naturally afforded a strong temptation to certain practitioners to obscure the issues and minimise the effects of wrongdoing by emotional appeals to the jury and impassioned, but wholly fallacious, rhetoric. Fortunately for the ends of justice, and, it may be added, the good name of the Bar of the Central Criminal Court, ridicule—that potent remedy for most social blemishes of the kind—stepped in at this juncture to vindicate the cause of righteousness and good sense. Mr. *Punch*, with his usual shrewd perception of the true merits of the case, let fly the shafts of his amusing and salutary satire, and he did not aim in vain. Thus the public was duly informed that an application was about to be made for a regular licence for the "Criminal Drama" at the "Great National Theatre Royal, Old Bailey." The cast, so the mock advertisement ran, would include "the most celebrated murderers supported by a powerful phalanx of distinguished Barristers." This humorous announcement was followed up by a cartoon representing the exterior of the Central Criminal Court disguised as a sort of showman's booth, with a

large painted canvas displaying a sensational murder trial in progress, the judges all ranged, the galleries packed, and the defending counsel in tears. Meanwhile a vociferous tout, in wig and gown, was inviting the crowd of "noble swells" to walk up and regale themselves with the spectacle of a bevy of "real bullet-headed murderers" on trial for their lives!

The timely irony of the great journalistic censor in thus holding up to the laughter of the public a theatrical and utterly unwholesome state of things, joined to the sound sense of the profession, brought about a great and beneficial change in the style of advocacy in our Courts. Greater attention was henceforth paid to the real facts of the case, the points of law were more thoroughly mastered and the true interest of the client considered. Lord Abinger's method with juries has already been noticed (p. 4), and O'Connell, himself one of the first forensic and parliamentary orators, supported the justice of this manner of procedure with the weight of his great opinion. "A good speech," he used to say, "is a good thing, but never forget that the verdict is *the thing*."

There was a real danger at the time this salutary admonition of the Liberator was uttered, of not a few, even of the most eminent members of the Bar, losing sight of its truth. Not even Brougham and Denman were wholly free from the defect of emotionalism in their addresses. This was specially noticeable on the occasion of their speeches for Queen Caroline against the historical Bill of Pains and Penalties at the Bar of the Lords in 1820, when Denman in particular came very near annihilating the cause of his royal client by his histrionic manner and a scriptural comparison which, considering the circumstances, could hardly have been more unfortunately selected.*

It has been said, and there seems no reason to doubt the truth of the assertion, that nothing has been more fatal to eloquence at the Bar than the operation of the Judicature Acts (1873 and 1881),

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* The allusion was to the woman taken in adultery (St. John viii, 11), which evoked the following humorous epigram:

"Most gracious Queen, we thee implore;
To go away and sin no more!
Or, if that effort be too great,
To go away, at any rate!"

which have made non-jury cases so common. Despite Lord Bramwell's dictum that one-third of every judge is a common juror, the prosaic element appears to be uppermost. The Bench is not often emotional. It has a very high appreciation of facts, and usually very little regard for the mere graces of language, and none at all for sensational appeals. Moreover, this prosaic way of looking at things seems, by most accounts, to be invading even the jury-box, and hence cynical yawns, and not the higher emotions, more often than not greet the most pathetic efforts of counsel to create a sentimental leaning towards their clients at the expense of actual fact.

The philosophical investigator of the reason of this decline of the "passions" in forensic address may perhaps ascribe it to one of several causes. He may seek it in the levelling tendencies of recent years and the consequent decay of reverence. He may refer it to scientific thought and to an exact state of mind, or even, with some headmasters, to the increasing neglect of the classics and the loss of their inherent and refining beauties.

All these circumstances play their part, no doubt, in the decline of oratory, but to the present writer the most powerful cause of the phenomenon appears to exist in the Prisoners' Evidence Act of 1898. This epoch-making statute permits every accused person on trial to give evidence on his own behalf, subject, of course, to cross-examination by the prosecution. While the Act is generally regarded as an additional safeguard to the really innocent, it has proved a veritable pitfall to the guilty, and in any case statements made by the accused under such circumstances cannot fail powerfully to affect the efforts of his counsel, whose most forcible address, from every point of view, must be inevitably listened to by the Court in the light of what his client himself has already admitted. Though no prisoner is compelled to go into the witness-box, if he should decline to do so for any reason the jury is not slow to form a conclusion usually entirely hostile to his claim to be considered as an innocent man.

Yet, if the voices of the Graces are nowadays usually silent amidst the groves of Theseus, the student of the subject may perhaps derive not a little consolation from the reflection that the cause of public and private justice has gained enormously by the change. There can be not the slightest doubt that in the past

impassioned rhetoric, both in the Senate and at the Bar—chiefly at the latter—has frequently been responsible for grave errors and miscarriages of justice, and in the preceding pages we have already referred to one of these, a case in which the poetic oratory of Charles Phillips was directly responsible for a manifestly erroneous verdict. Long ago, years before what grammarians call the beauty and power of language were threatened, the Duke of Wellington, with his accustomed common sense, advised a young Member of Parliament, if called upon to address the House, "to say what you have to say, don't quote Latin, and sit down." The wisdom of this simple brevity, so characteristic of the mighty soldier, has come home to the present generation, and except, perhaps, on those rare occasions when exceptional circumstances call for a rhetorical flourish, the underlying idea of the ducal advice is not likely to be forgotten. But if modern verbal address be less richly endowed with poetic similitudes and ornate figures of speech than heretofore, it is in many respects none the less worthy of our admiration. For, as a rule, it is dignified, coherent, and even, at times, positively eloquent. The object of every sincere speech, after all, is not to arouse the passions or flatter the senses, but to convince the hearers of the *truth*.

LORD ERSKINE.

LORD ERSKINE (1750—1823).

THE primrose path of success, a handsome fortune crowned by a peerage and the highest civil honour the State can bestow have not been uniformly the lot of the vindicator of public liberty. Yet the Honourable Thomas Erskine, third son of Henry David, Earl of Buchan, achieved all these things, and that, too, in an age and amidst circumstances when to challenge gross abuses and expose the flaws in "our happy Constitution" were regarded as akin to open disloyalty. After quitting the Edinburgh Academy this favourite of fortune entered the Navy as a midshipman, and for four years braved the hardships of the senior service so vividly described by his countryman and contemporary Smollett. He exchanged the cocked hat and dirk for the ensign's sword and sash in 1768, and when with his regiment (the First Royals) at Minorca devoted his leisure to literature. Like the Baron of Bradwardine, he occasionally preached and read prayers to his company when the chaplain was not available, and altogether proved himself well versed in "both disciplines of war and Church." In 1775 he sold out, entered himself at Cambridge and Lincoln's Inn, and turned Bar-student in earnest. Three years later he was "called." As the Navy had been his first experience of real life, so its affairs were destined to start him on the road to forensic fame. His maiden brief was the defence of Captain Bailie, R.N., in a prosecution for libel set on foot by the high officials of Greenwich Hospital, and Erskine's first naval engagement resulted in a victory. In another similar case, that of Dr. Shipley, Dean of St. Asaph, who was proceeded against for publishing a pamphlet alleged to contain defamatory expressions, Erskine insisted on the jury giving a verdict on the whole matter at issue—thereby establishing a principle which afterwards formed the chief feature of Fox's famous Libel Act of 1792.

Erskine's apogee as an advocate was reached shortly after the outbreak of the French Revolution, when the State prosecutions of various persons who sought to propagate ultra-democratic principles in this country called him forth to defend, on several

occasions, the right of free speech and discussion. Tom Paine, Hardy, Horne Tooke and Thelwall were among the number on whose behalf this heaven-born advocate exerted his marvellous powers of logic and eloquence. The leading counsel for the defence became a universal idol. Busts and portraits of the popular pleader were sold everywhere, and corporations vied with each other in bestowing upon him the freedom of their several cities. In the short-lived "Ministry of All the Talents" (1806), Erskine received the crowning honour of the Chancellorship, together with the title of Baron Erskine of Restormel Castle, in Cornwall, but perhaps the most gratifying mark of public favour of all, was the address in which the Bar of England, about this time, thanked him for having so ably and courageously vindicated the public liberties of the country. Lord Erskine's last years were spent in semi-retirement, his well-earned leisure being unfortunately clouded by severe financial losses. His sonorous periods were heard for the last time in a matter of great popular interest, when, in the course of 1820, he boldly stood forward in the House of Lords to champion the cause of George IV.'s discarded Consort, Caroline, the "unhappy Queen of England." When death, three years later, ended the career of this pre-eminent legal luminary—whom, as a forensic orator, Lord Campbell held to be without an equal either in ancient or modern days—Brougham, in a noble panegyric, reminded the nation at large that if the power of freely discussing the deeds of our rulers and of promoting wholesome changes in our Constitution had come to be regarded as a patriotic and not a traitorous act, it was almost entirely due to this great man, to whom "under Heaven, we owe the felicity of the times."

The Curse of Informers.

Speech in Defence of Mr. Frost (abridged). Trial for Sedition, May, 1793.

Gentlemen,—It is impossible for me to form any other judgment of the impression which such a proceeding altogether is likely to make upon your minds but from that which it makes upon my own. In the first place, is society to be protected by the breach of those confidences and in the destruction of that security and

tranquillity which constitutes its very essence everywhere, but which till of late most emphatically characterized the life of an Englishman? Is government to derive dignity and safety by means which render it impossible for any man who has the least spark of honour to step forward to serve it? Is the time come when obedience to the law and correctness of conduct are not a sufficient protection to the subject, but that he must measure his steps, select his expressions and adjust his very look in the most common and private intercourses of life? Must an English gentleman in future fill his wine by a measure, lest in the openness of his soul, and whilst believing his neighbours are joining with him in that happy relaxation and freedom of thought which is the prime blessing of life, he should find his character blasted and his person in a prison? Does any man put such constraint upon himself in the most private moment of his life that he would be content to have his loosest and lightest words recorded and set in array against him in a court of justice? Thank God the world lives very differently, or it would not be worth living in! There are moments when jarring opinions may be given without inconsistency, when Truth herself may be sported with, without the breach of veracity; and where well-imagined nonsense is not only superior to, but is the very index to wit and wisdom. I might safely assert, taking, too, for the standard of my assertion, the most honourably-correct and enlightened societies in the kingdom, that if malignant spies were properly posted, scarcely a dinner would end without a duel and an indictment. . . . Gentlemen, the misery and disgrace of society under the lash of informers, running before the law and hunting men through the privacies of domestic life, is described by a celebrated speaker [Edmund Burke] with such force and beauty of eloquence that I will close my observations on this part of the subject by repeating what cannot, I am persuaded, be uttered amongst Englishmen without sinking deep into their hearts: "A mercenary informer knows no distinction. Under such a system the obnoxious people are slaves not only to the government, but they live at the mercy of every individual; they are at once the slaves of the whole community and of every part of it; and the worse and most unmerciful of men are those on whose goodness they most depend."

Unjust Prosecution.

From the Speech for Mr. Walker, indicted for Treasonable Conspiracy (1794).

Unjust prosecutions lead to the ruin of all governments. Whoever will look back to the history of the world in general, and of our own particular country, will be convinced that exactly as prosecutions have been cruel and oppressive and maintained by inadequate and unrighteous evidence, in the same proportion and by the same means, their authors have been destroyed instead of being supported by them; as often as the principles of our ancient laws have been departed from in weak and wicked times, so often the governments that have violated them have been suddenly crumbled into dust; and therefore wishing, as I most sincerely do, the preservation and prosperity of our happy Constitution, I desire to enter my protest against its being supported by means that are likely to destroy it. Violent proceedings bring on the bitterness of retaliation, until all justice and moderation are tramped down and subverted. Witness those sanguinary prosecutions previous to the awful period in the last century, when Charles the First fell. That unfortunate Prince lived to lament those vindictive judgments by which his impolitic, infatuated followers thought they were supporting his throne; he lived to see how they destroyed it; his throne, undermined by violence, sunk under him, and those who shook it were guilty in their turn (such is the natural order of injustice), not only of similar, but of worse and more violent wrongs. Witness the fate of the unhappy Earl of Strafford, who, when he could not be reached by the ordinary laws, was impeached in the House of Commons, and who, when still beyond the consequence of that judicial proceeding, was at last destroyed by the arbitrary and wicked mandate of the Legislature. . . . I cannot tell how others feel upon these subjects, but I do know how it is their interest to feel concerning them. We ought to be persuaded that the only way by which government can be honourably or safely supported, is by cultivating the love and affection of the people, by showing them the value of the Constitution by its protection,

by making them understand its principles by the practical benefits derived from them, and above all in letting them feel their security in the administration of law and justice. . . . Put yourselves, gentlemen, in the place of the defendants, and let me ask : If you were brought before your country upon a charge supported by no other evidence than that which you have heard to-day, and encountered by that which I have stated to you, what would you say, or your children after you, if you were touched in your persons or your properties by a conviction? May you never be put to such reflections, nor the country to such disgrace! The best service we can render to the public is that we should live like one harmonious family, that we should banish all animosities, jealousies and suspicions of one another : and that, living under the protection of a mild and impartial justice, we should endeavour with one heart, according to our best judgments, to advance the freedom and maintain the security of Great Britain.

From the Speech for Mr. Hardy. Trial for High Treason, Old Bailey, Oct., 1794.

BEFORE I advance to the regular consideration of this great cause, either as it regards the evidence or the law, I wish first to put aside all that I find in the speech of my learned friend, the Attorney-General, which is either collateral to the merits or in which I can agree with him. First, then, in the name of the prisoner and speaking his sentiments, which are well known to be my own also, I concur in the eulogium which you have heard upon the Constitution of our wise forefathers. But before this eulogium can have any just or useful application, we ought to reflect upon what it is which entitles this Constitution to the praise so justly bestowed upon it. To say nothing at present of its most essential excellence, or rather the very soul of it, viz., the share the people ought to have in their government, by a pure representation, for the assertion of which the prisoner stands arraigned as a traitor before you. What is it that distinguishes the government of England from the most despotic monarchies? What but the security which the subject enjoys in a trial and

judgment by his equals; rendered doubly secure as being part of a system of law which no expediency can warp and which no power can abuse with impunity? . . . If this prosecution has been commenced—as it is asserted—to avert from Great Britain the calamities incident to civil confusion, leading in its issues to the deplorable condition of France, I call upon you, gentlemen, to avert such a calamity from falling upon my client, and through his side upon yourselves and upon our country. Let not *him* suffer under vague expositions of tyrannical laws, more tyrannically executed. Let not him be hurried away to pre-doomed execution from an honest enthusiasm for the public safety. I ask for him a trial by this applauded Constitution of our country. I call upon you to administer the law to him, according to our wholesome institutions, by its strict and rigid letter; however you may eventually disapprove of any part of his conduct, or, viewing it through a false medium, may think it even wicked, I claim for him, as a subject of England, that the law shall decide upon its criminal denomination. I protest in his name against all appeals to speculations concerning consequences, when the law commands us to look to intentions. If the State be threatened with evils, let Parliament administer a prospective remedy, but let the prisoner hold his life under the law. Gentlemen, I ask this solemnly of the Court whose justice I am persuaded will afford it to me. I ask it more emphatically of you, the jury, who are called, upon your oaths, to make a true deliverance of your countryman from this charge. But lastly, and chiefly, I implore it of Him in Whose hands are all the issues of life, Whose humane and merciful eye expands itself over all the transactions of mankind, at Whose command nations rise and fall and are regenerated.

Trial by Jury Undermined.

The administration of criminal justice in the hands of the people is the basis of all freedom. While that remains, there can be no tyranny, because the people will not execute tyrannical laws on themselves. Whenever it is lost, liberty must fall along with it, because the sword of justice falls into the hands

of men who, however independent, have no common interest with the mass of the people. Our whole history is, therefore, chequered with the struggles of our ancestors to maintain this important privilege . . . and although our ancestors had stipulated by Magna Charta that no freeman should be judged but by his peers, the Courts of Star Chamber and High Commission, consisting of Privy Counsellors elected during pleasure, opposed themselves to that freedom of conscience and civil opinion which, even then, were laying the foundations of the Revolution. . . . When the people by the aid of an upright Parliament had thus succeeded in reviving the constitutional trial by the country, the next course taken by the Ministers of the Crown was to pollute what they could not destroy. Sheriffs devoted to power were appointed, and corrupt juries packed to sacrifice the rights of their fellow-citizens under the mask of a popular trial. This was practised by Charles II., and was made one of the charges against King James for which he was expelled the kingdom.

[From his defence of the Dean of St. Asaph for libel, Shrewsbury, 1784.]

The Independence of Juries Finally Established.

When juries could not be found to their minds, judges were daring enough to browbeat the jurors and to dictate to them what they called the law. And, in Charles the Second's time, an attempt was made which, had it proved successful, would have been decisive. In the year 1670, Penn and Mead, two Quakers, being indicted for seditiously preaching to a multitude tumultuously assembled in Gracechurch Street, were tried before the Recorder of London, who told the jury that they had nothing to do but to find whether the defendants had preached or not; for that, whether the matter or the intention of their preaching were seditious were questions of law and not of fact, which they were to keep to at their peril. The jury after some debate found Penn guilty of speaking to some people in Gracechurch Street, and on the Recorder's telling them that they meant, no doubt, that he was speaking to a tumult of people there, he was informed by the foreman that they allowed of no such words in their finding, but

adhered to their former verdict. The Recorder refused to receive it, and desired them to withdraw. On which they again retired, and brought in a general verdict of acquittal, which the Court considering as a contempt, set a fine of forty marks upon each of them, and condemned them to lie in prison till it was paid. Edward Bushel, one of the jurors—to whom we are almost as much indebted as to Mr. Hampden, who brought the Case of Ship-money before the Exchequer—refused to pay his fine, and being imprisoned in consequence of the refusal, sued out his writ of habeas corpus, which, with the cause of his commitment, was returned by the Sheriffs of London to the Court of Common Pleas, when Lord Chief Justice Vaughan, to his immortal honour, delivered his opinion as follows : " We must take off this veil and colour of words which make a show of being something, but are in fact nothing. If the meaning of these words ' finding against the direction of the Court in matter of law ' be that if the judge, having heard the evidence given in Court—for he knows no other —shall tell the jury upon this evidence that the law is for the Crown, and they, under the pain of fine and imprisonment, are to find accordingly, every man sees that the jury is but a trouble-some delay, great charge, and of no use in determining right and wrong, and therefore the trials by them may be better abolished than continued, which were a strange and new-found conclusion after a trial so celebrated for many hundreds of years in this country." He then applied this sound doctrine with double force to criminal cases, and discharged the upright juror from his illegal commitment. The determination of the right of juries to find a general verdict was never afterwards questioned by succeeding judges, not even in the great case of the Seven Bishops, on which the dispensing power and the personal fate of King James himself in a great measure depended.—[*Ibid.*]

LORD THURLOW.

EDWARD LORD THURLOW (1731—1806).

THAT "no one ever was as wise as Thurlow looked," was a saying (of Fox's), often repeated in his own day, but never, we may be certain, within earshot of the formidable Chancellor who was compared to Pluto, and who ruled the House of Lords and the Court of Chancery much in the same way as a severe schoolmaster dominates a class of awestruck boys. The rector of the quiet Suffolk village of Ashfield was the father of this potent force in the councils of George III., and the worthy country clergyman and his wife must have often foreboded a tragic future for their eldest son. Wayward at Canterbury Grammar School and remarkable for dissipation—in an age notorious for its dissoluteness—at Caius College, Cambridge, the future Chancellor appears to have reformed somewhat when he began keeping his terms for the Bar, for a friend reports that he "found him close at study in a morning," whenever he called upon him at the Inner Temple. Thurlow's début in the law was marked by straitened circumstances; he travelled the Northern Circuit by the simple expedient of taking horses on trial and returning them as "unsuitable"—on reaching his destination! "Parts," however, soon got the better of "poverty," and a verbal tussle with the redoubtable Sir Fletcher Norton—another grizzly bear of a barrister—won the hearts of a Court full of admiring attorneys. Henceforth Thurlow, like Dickens's Charles Stryver, shouldered his way through the Bar, succeeding Dunning as Solicitor-General (1770), and achieving the crowning honour of the Chancellorship in June, 1778. As member of the House of Commons, he had devoted the great powers of his rugged nature to supporting the Ministry—overwhelming opponents by rough invective, withering sarcasm and a tempestuous oratory in which, as a shrewd contemporary critic remarked, reason was rather silenced than convinced.* But Thurlow, to do him justice, was not merely the

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* Charles Butler, of Lincoln's Inn, who occasionally practised before him. See Introduction, p. 11.

chief of the "King's Friends" the thick-and-thin supporter of the American War—the implacable foe of Fox's India Bill. He was the Mirabeau of the Toryism which had réplaced the Jacobitism of '45, and had the anarchy of the French Revolution prevailed in this country he would have thundered forth in defence of the throne regardless of personal consequences. But this strenuous supporter of things as they were, who roughly snubbed dukes and earls and browbeat every rising objector, was not to last. Goliath at length met his David. In 1792 Pitt gave George III. the choice between himself and the terrible Keeper of the Royal Conscience, and the "heaven-born" minister prevailed. Thurlow surrendered the seals quietly to Dundas—at whose courage in demanding them the world had stood amazed—and a friendly breakfast, and not a storm, concluded the ceremony.

The years of the Chancellor's retirement were spent chiefly between Brighton and Bath—fighting the ravages of that very Georgian complaint the gout—and in the reading of the classics, which shows that Thurlow's youthful idleness was very probably much exaggerated and that he had a mind for the time-honoured literary amenities. Though he "damned" even the bishops in his wrath, he obtained the mitre of Durham for his brother Thomas, a prelate conspicuous for the mildness and piety his kinsman so greatly lacked, and it is the descendant of the Bishop who now enjoys the title rendered memorable by the subject of this notice.

Printers and Booksellers and Authors.

Printers and booksellers, my Lords, are not remarkable for too much modesty. Authors are generally proud, and of so old-fashioned a turn of thinking that if a great man gives them a promise they are weak enough to imagine it is to be kept! That booksellers are also exceedingly vain, and take every advantage of authors which they can, adding their name to their cause merely from motives of self-interest; otherwise they would have got Mr. Addison to have assisted them with his influence while he was in power. A numerous multiplication of copies is of late date. Shakespeare's works have gone through but two

editions of 500 each in two centuries, and 11,000 of Smollett's History of England—the worst of the many bad histories of England extant—have been sold in a very short time. When large numbers were first printed, the art of reviling the Sovereign, abusing the minister and libelling every officer of government was discovered—arts happily banished in this quiet era. Junius had an inflamed imagination, a weak head and a worse heart. In the cause of Midwinter both plaintiff and defendant resembled fencers with skates on treading upon ice, as they both went further than either of them intended. Alexander Donaldson, his client, never printed a work within the time of the limitation of the 8th of Queen Anne, or in the lifetime of the author. Booksellers opprobriously term men who laudably enlarge the circle of literature by giving new editions of works of merit—pirates. The reversal of the decree of the Court of Chancery will rather be of service to authors than disservice. There are now 20,000 printers in London, and in order to convince your Lordships of the truth of the assertion, I beg leave to trouble your Lordships with a particular circumstance in proof thereof. I happened to be upon the streets when a Lord Mayor, two years since, was coming to the House of Commons to answer for having discharged a city printer out of the hands of a messenger of that House. The cavalcade was numerous, but I observed only half the number of printers who usually make up the mob. I asked the reason of it and was informed that ten thousand of them were gone to Tyburn to see a brother printer hanged, so I found they were divided in opinion whether they should conduct one friend to the gallows, or another friend to the House of Commons!

[Argument for the appellants, *Donaldsons* v. *Beckett*; case of literary property. House of Lords, Feb. 1774.]

JOHN PHILPOT CURRAN (1750—1817).

THE "patriot of the Irish Senate and the glory of the Irish Bar" —as his friend and biographer Charles Phillips styles him—was born at Newmarket, Cork, of a family descended from the stock of the Cumberland Curwens. His father was seneschal of the local manorial court, and the future orator owed his university course at Trinity College, Dublin, to the kindness of a clergyman, the Rev. Nathaniel Boyse, who generously defrayed a large part of the requisite funds. Young Curran, who had been an idle, ugly and mischievous boy at school, spent much of his time at Trinity in "roystering," but on entering at the Middle Temple to qualify for the Bar he made up for much lost time by studying law diligently and acquiring a good stock of English literature and history. His latent powers of oratory were developed at the "Devils of Temple Bar" and the other metropolitan "spouting" clubs. He was "called" at Dublin during Michaelmas Term, 1775. Though a Protestant, Curran's entire sympathies were with the great mass of the people of Ireland, among whom he quickly became an idol. His first notable case was as counsel for a Catholic priest, the Rev. Mr. Neale, in an action against Lord Doneraile for a brutal assault. That a Papist, and especially a priest, should at that time have presumed to prosecute a peer and one of the all-powerful "Ascendancy," was regarded as something scarcely less than sheer audacity, but Curran won the day, obtaining for his client thirty pounds damages. The courage shown by Curran in this affair had its reward. Briefs flowed in, and in 1782, after but seven years at the Bar, he received a silk gown, then a great and rare distinction. As Member of Parliament for Rathcormac, he spoke well and often in favour of such measures as the removal of the Catholic disabilities, financial retrenchment and parliamentary reform. During the stormy period which preceded and followed '98, Curran was the Erskine of Ireland. In deep sympathy with many of the ideals of the

United Irishmen, and realising to the full the woeful misgovernment of his unhappy country, the great orator now stood forth as the champion of the proscribed patriots. He defended in succession William Orr (1797), the brothers Sheares, Hamilton Rowan, Wolfe Tone and Napper Tandy (1798). His defence, which in each case was brilliant, has given his name an immortal lustre in the annals of Irish nationalism. Curran's career as a barrister practically ended with the Union—a measure which he always denounced as "the annihilation of Ireland." From 1806 to 1814 he held the office of Master of the Rolls in Dublin, an uncongenial post to one whose genius was combative rather than judicial. His last years were spent chiefly in London, and they were for the most part years of sadness. The elopement of his wife and the deaths of two favourite daughters—one, Sarah, the betrothed of the ill-fated Robert Emmett—were not the least of his sorrows. He sought alleviation in visits to France, in playing on the violoncello, of which instrument he was always very fond, and in assemblies, usually of the convivial kind. His death at Amelia Place, Brompton, on the fourteenth of October, 1817, deprived his country of a pure and disinterested patriot and society of a wit and humorist of the first order. His body was removed in 1834 to Glasnevin, the Père la Chaise of Ireland.

The astonishing powers of language of this remarkable man were the outcome of an exuberance of spirits and a depth of feeling which appear rarely to have left him during any of the varied phases of his strenuous career. When aroused by injustice, he could be terrible in his scorn, while his withering retorts more than once held in check a browbeating Bench, even when presided over by his bitter personal enemy, the redoubtable Lord Clare. It is unfortunate that his speeches have come down to us only in imperfect reports. Never much of a man of books, and constantly immersed in affairs of the most engrossing nature, the great pleader appears to have neglected to correct what was amiss in these historic addresses, even when the matter was brought to his notice. But defective as they are, they must ever remain as veritable monuments of forensic eloquence and of that love of justice and of country which has endeared the name of Curran to each succeeding generation of his people.

Confidence Inspired by Religion.

Do you not feel, my countrymen, a sort of anticipated consolation in reflecting that the religion which gave us comfort in our early days enabled us to sustain the stroke of affliction and endeared us to one another, and when we see our friends sinking into the earth fills us with the expectation that we rise again—that we but sleep for a while, to wake for ever? But what kind of communion can you hold—what interchange expect—what confidence place in that abject slave—that condemned, despaired-of wretch who acts under the idea that he is only the folly of a moment—that he cannot step beyond the threshold of the grave—that that which is an object of terror to the best, and of hope to the confiding, is to him contempt or despair?

[From his defence of John and Henry Sheares for high treason, July, 1798.]

The Influence Exercised by a Jury.

I am reasoning for your country and your children to the last hour of your dissolution. Let me not reason in vain! I am not playing the advocate—you know I am not—your conscience tells you I am not. I put this case to the Bench—the statute 7 Henry III. does not bind this country by its legislative cogency, and will you declare positively, and without doubt, that it is common law or enacting a new one? Will you say it has no weight to influence the conduct of a jury from the authority of a great and exalted nation?—the only nation in Europe where Liberty has seated herself. Do not imagine that the man who praises liberty is singing an idle song—for a moment. It may be the song of a bird in his cage. I know it may. But you are now standing upon an awful isthmus—a little neck of land where liberty has found a seat. Look about you—look at the state of the country—the tribunals that dire necessity has introduced—look at this clause of law admitting the functions of a jury. I feel a comfort—methinks I see the venerable forms of Holt and Hale looking down upon us, attesting its continuance. Is it your opinion that bloody verdicts are necessary—that blood

enough has not been shed—that the bonds of society are not to be drawn close again nor the scattered fragments of our strength bound together to make them of force, but they are to be left in that scattered state in which every little child may break them to pieces? You will do more towards tranquilising the country by a verdict of mercy. Guard yourselves against the sanguinary excesses of prejudice or revenge : and though you think there is a great call of public justice, let no unmerited victim fall.—[*Ibid.*]

The Law of High Treason.

There is a point to which I shall beseech the attention of your Lordships. I know your humanity, and it will not be applied merely because I am exhausted or fatigued. You have only one witness to any overt act of treason. There is no decision upon the point in this country. Jackson's Case was the first. Lord Clonmell made allusion to the point, but a jury ought not to find guilty upon the testimony of a single witness. It is the opinion of Foster that by the common law one witness is sufficient. Lord Coke's opinion is, that two were necessary. They are great names; no man looks upon the works of Foster with more veneration than myself, and I would not compare him with the depreciated credit of Coke. I would rather leave Lord Coke to the character which Foster gives him, that he was one of the ablest of lawyers, independent of some particulars, that ever existed in England. In the wild extravagance, heat and cruel reign of the Tudors such doctrines of treason had gone abroad as drenched the kingdom with blood. By the construction of Crown lawyers, and the shameful compliance of juries, many sacrifices had been made, and therefore it was necessary to prune away the excesses by the statute of Edward VI., and therefore there is every reason to imagine from the history of the times that Lord Coke was right in saying, not by a new statute, but by the common law, confirmed and redeemed by declaratory acts, the trials were regulated. A law of Philip and Mary was afterwards enacted. Some think it was a repeal of the statute of Edward VI.; some think not. I mention this diversity of opinions with this view, that in this country, upon a new point of that kind, the weight of criminal prosecution will turn the scale in favour of the

prisoner, and that the Court will be of opinion that the statute 7 & 8 Will. III. did not enact any new thing unknown to the common law, but redeemed it from abuse.—[*Ibid.*]

Informers.

I have been eighteen years at this Bar, and never until this year have I seen such witnesses supporting charges of this kind with such abandoned profligacy. In one case, where men were on their trial for their lives, I felt myself involuntarily shrinking under your Lordships' protection from the miscreant who leaped on the table, and announced himself a witness. I was trusting in God that these strange exhibitions would be confined to the remote parts of the country. I was astonished to see them parading through the capital; but I feel that the night of unenlightened wretchedness is fast approaching when a man shall be judged before he is tried—when the advocate shall be libelled for performing his duty to his client, that right of human nature—when the victim shall be hunted down, not because he is criminal, but because he is obnoxious.

[From the defence of Dr. Drennan, who was acquitted on a charge of libel, 1794.]

Human Vampires and the Law.

The law of England recognises the possibility of villains thirsting for the blood of their fellow-creatures, and the people of Ireland have no cause to be incredulous of the fact. Thus it is that in England two witnesses are essential to the proof of high treason, and the poorest wretch that crawls on British ground has this protection between him and those vampires who crawl out of their graves in search of human blood. If there be but one witness there is the less possibility of contradicting him—he the less fears any detection of his murderous tale, having only infernal communication between him and the author of all evil; and when on the table, which he makes the altar of sacrifice, however common men may be affected at the sight of the innocent victim, it cannot be supposed that the prompter of his perjury will instigate him to retribution—this is the law of England, and God

forbid that Irishmen should so differ in the estimation of the law from Englishmen, that their blood is not equally worth preserving.

[From the defence of Mr. Patrick Finney for high treason, Tuesday, Jan. 16, 1798. The accused was acquitted.]

SIR JAMES MACKINTOSH (1765—1832).

THE philosophical defender of the Whigs and the apologist of the Revolution of 1688 was, curiously enough, the scion of a Jacobite stock—one of that very Clan Chattan which at Culloden nearly annihilated Cumberland's advanced wing and left its dead by ranks deep on the fatal field. Mackintosh's first bent was medicine, but after taking his M.D. degree at Edinburgh his thoughts travelled southward to larger spheres of ambition, and 1788 saw him in London a student for the Bar at Lincoln's Inn. He was called in Michaelmas Term 1795, when at the height of his first reputation as the author of the "Vindiciae Galliae," a trenchant reply to Burke's "Reflections on the French Revolution." The "Vindiciae," of course, made much of the rhetorical exaggerations of the Church and King Apologia, but later, when the horrors of the Reign of Terror had added the logic of events to the force of surpassing eloquence, Mackintosh acknowledged to Burke that he had been "the dupe of his own enthusiasm." In 1796 the young counsellor found his true sphere as a lecturer on the Law of Nature and of Nations, which not only revived for a brief space the ancient Readings at Lincoln's Inn, but attracted by its interest and research a crowd of persons unconnected with the law. Seven years later he defended at the Old Bailey M. Peltier, an immigrant Royalist, for a libel on Napoleon Bonaparte, then First Consul. His address to the jury, a forcible piece of pleading, secured the acquittal of his client. But Mackintosh had too metaphysical a mind ever to become a supreme orator either in Parliament or at the Bar. In 1804 he went to India as Recorder of Bombay, a position which he filled with conspicuous ability, and long afterwards his party, when in power (1830), rewarded their philosophical defender with the post of Commissioner for Indian affairs. Upon his return to England, Sir James lectured on Oriental law at Haileybury College, and represented Knaresborough in the House of Commons; but his later years did not fulfil his early promise. The enervating effect of Indian

climate, his own indolence and the charms of society—the meteoric society of the Holland House circle—all contributed to withdraw him from continued serious literary effort, though his "Life of Sir Thomas More" and admirable "Dissertation on the Progress of Ethical Philosophy" are classics. The valuable fragmentary "History of the Revolution of 1688," too, has been applauded and immortalised by Macaulay, and if Mackintosh had had the good fortune to fall in with a Boswell, his brilliant table-talk—*de omnibus rebus et quibusdam aliis*—would have undoubtedly instructed and delighted succeeding generations.

GENTLEMEN,—There is one point of view in which this case seems to merit your most serious attention. The real prosecutor is the master of the greatest empire the civilized world ever saw—the defendant is a defenceless proscribed exile. I consider this case, therefore, as the first of a long series of conflicts between the greatest power in the world and the only FREE PRESS remaining in Europe. Gentlemen, this distinction of the English Press is new—it is a proud and a melancholy distinction. Before the great earthquake of the French Revolution had swallowed up all the asylums of free discussion on the Continent, we enjoyed that privilege, indeed, more fully than others, but we did not enjoy it exclusively. In Holland, in Switzerland, in the imperial towns of Germany, the Press was either legally or practically free. Holland and Switzerland are no more; and since the commencement of this prosecution fifty imperial towns have been erased from the list of independent States by one dash of the pen. Three or four still preserve a precarious and trembling existence. I will not say by what compliances they must purchase its continuance. I will not insult the feebleness of States whose unmerited fall I do most bitterly deplore. . . . One asylum of free discussion is still inviolate. There is still one spot in Europe where man can freely exercise his reason on the most important concerns of society, where he can boldly publish his judgment on the acts of the proudest and most powerful tyrants. The Press of England is still free. It is guarded by the free Constitution of our forefathers. It is guarded by the hearts and arms of Englishmen, and I trust I may venture to say that, if it be to fall, it will fall only under the ruins of the British Empire. It is an awful

consideration, gentlemen. Every other monument of European liberty has perished. That ancient fabric which has been gradually reared by the wisdom and virtue of our fathers still stands. It stands, thanks be to God! solid and entire—but it stands alone and it stands in ruins. Believing then, as I do, that we are on the eve of a great struggle, that this is only the first battle between reason and power—that you have now in your hands committed to your trust the only remains of free discussion in Europe. . . . I trust that you will consider yourselves as the advanced guard of liberty—as having this day to fight the first battle of free discussion against the most formidable enemy that it ever encountered.

[Extract from speech in defence of M. Peltier for a libel on Napoleon Bonaparte. Old Bailey, February, 1803.]

WILLIAM CONYNGHAM PLUNKET (1764—1854).

THIS famous lawyer, orator and Lord Chancellor of Ireland may be said to have inherited a love of public speaking and affairs from his father, the Rev. Thomas Plunket, pastor of the Strand Street Presbyterian Chapel, Dublin. The elder Plunket was a man of strong political views and much public spirit, and his advice was often sought by the leaders of the "patriotic," or, as it would now be called, the national, party in Ireland. He died somewhat prematurely in 1778, leaving a widow and young family to battle with the world. Kind friends came to their aid, and the subject of this memoir was enabled to enter Trinity College, Dublin, where he proved both a hard-working and brilliant student, winning medals for oratory and history, and writing an essay on "The Age," which was published at the expense of the Historical Society. The course at Trinity was followed by term-keeping at Lincoln's Inn. He was called at the King's Inn, Dublin, in 1787.

Plunket combined in an eminent degree the reasoning powers of the dialectician with the enthusiasm of the rhetorician. Like many another famous advocate, he was not a deeply-read lawyer, but had a thorough grasp of principles. His success was quickly assured, and within ten years of his "call" he was a King's Counsel. He sat in the Irish Parliament for Charlemont during the last two years of its existence and contributed to the flood of oratory and argument against the imminent Union. With Curran he defended the Sheares brothers for their share in the '98 rebellion, but five years later appeared as one of the counsel for the prosecution of Robert Emmett. This gave great offence to the extremists, but unjustly so. Emmett's rising was regarded generally at the time as a criminally quixotic enterprise, having no other result that a useless effusion of blood, and affording a pretext to the enemies of Ireland to pursue still further their repressive policy. Two years later Plunket became Attorney-General, by which time he was member for Midhurst in the English House of Commons. In this capacity he was not merely

one of the few successful lawyer-politicians, but from the first a new and compelling force, speaking incisively on most measures, and always illuminating every subject upon which he discoursed. His abiding topic, however, was Catholic Emancipation. Like Sheil and many others, he was a "Vetoist," *i.e.*, a supporter of the proposed Government veto on the nomination of Catholic bishops in Ireland, a principle strongly opposed by O'Connell and his followers as tending indirectly to State control in ecclesiastical affairs. Plunket's professional reward came in 1827, when Canning—always his great admirer—nominated him to the Chief Justiceship of the Common Pleas in Ireland in succession to Lord Norbury. At the same time he was created Baron Plunket of the United Kingdom. The Lord Chancellorship of Ireland came to him in 1830, and this high office he held until 1841. He survived till January, 1854—ninety years—leaving behind him an enormous reputation, a large fortune, and a distinguished family. His eldest son, who was successively Bishop of Tuam, Killala and Achonry, died in 1866.

Of Lord Plunket's forensic genius there has never been any question. He excelled both in Chancery and common-law advocacy, and his speeches were invariably marked by logically-knit arguments, expressed in language both clear and precise. Few lawyers surpassed him in the art of successfully steering his way through the rocks and shoals of serious verbal objection, and though he seemed to some observers to disdain declamation as beneath him, he could, at times, be extremely eloquent. All these rare qualities, joined to the highest integrity, combined to make him what he was—one of the greatest lawyers and publicists that Ireland has produced.

Liberty and Equality.

"Liberty" and "equality" are dangerous names to make use of. If properly understood, they mean enjoyment of personal freedom under the equal protection of the laws; and a genuine love of liberty inculcates a friendship for our friends, our King, our country—a reverence for their lives, an anxiety for their safety; a feeling which advances from private to public life, until it expands and swells into

the more dignified name of philanthropy and philosophy. But in the cant of modern philosophy the affections which form the ennobling distinctions of man's nature are all thrown aside; all the vices of his character are made the instrument of moral good—an abstract quantity of vice may produce a certain quantity of moral good. To a man whose principles are thus poisoned and his judgment perverted, the most flagitious crimes lose their names. Robbery and murder become good. He is taught not to startle at putting to death a fellow-creature, if it be represented as a mode of contributing to the good of all. In pursuit of those phantoms and chimeras of the brain, they abolish feelings and instincts which God and Nature have planted in our hearts for the good of human-kind. Thus, by one printed plan for the establishment of liberty and a free republic, murder is prohibited and proscribed. And yet you heard how this caution against excesses was followed up by the recital of every grievance that ever existed and which could excite every bad feeling of the heart, the most vengeful cruelty and insatiate thirst of blood.

[Trial of Robert Emmett.]

The Character of William III.

Perhaps, my Lords, there is not to be found in the annals of history a character more truly great than that of William the Third. Perhaps no person has ever appeared on the theatre of the world who has conferred more essential or more lasting benefits on mankind; on these countries, certainly none. When I look at the abstract merits of his character, I contemplate him with admiration and reverence. Lord of a petty principality—destitute of all resources but those with which Nature had endowed him—regarded with jealousy and envy by those whose battles he fought; thwarted in all his counsels, embarrassed in all his movements, deserted in his most critical enterprises—he continued to mould all those discordant materials, to govern all those warring interests, and, merely by the force of his genius, the ascendancy of his integrity, and the immovable firmness and constancy of his nature, to combine them into an indissoluble alliance against the schemes of despotism and universal domination of the most powerful monarch in Europe, seconded by the

ablest generals, at the head of the bravest and best-disciplined armies in the world, and wielding without check or control the unlimited resources of his empire! He was not a consummate general; military men will point out his errors; in that respect fortune did not favour him, save by throwing the lustre of adversity over all his virtues. He sustained defeat after defeat, but always rose *adversa rerum immersabilis unda*. Looking merely at his shining qualities and achievements, I admire him as I do a Scipio, a Regulus, a Fabius—a model of tranquil courage, undeviating probity, and armed with a resoluteness and constancy in the cause of truth and freedom which rendered him superior to the accidents that control the fate of ordinary men.

[From his speech for the prosecution at the "Bottle Riot" Trial, Dublin, Feb. 23, 1823.]

The Value of Religion to Society.

Gentlemen,—We have had a miserable example in our own time. You may recollect that not many years back, in a neighbouring country, the most dreadful atrocities were committed. You recollect the overthrow of an ancient monarchy. That overthrow, deplorable as it was, was not the most dismal scene of the tragedy. The horrors of that unfortunate revolution, in which the hands of the father were imbrued in the blood of the son, in which all moral and social relations were raised in mutual warfare, could not be perpetrated until the sentiments of religion were previously extinguished in the minds of the people. Human nature was not outraged by gross and unexampled crimes until a solemn decree was framed declaring that there was no God in heaven! What the consequences were every man knows. But this I state, that as soon as a settled form of government was established, it was found that atheism and infidelity, which were the ready instruments to throw down the ancient throne, were an insecure foundation for a new one; and one of the first acts of the founder of the new dynasty was to restore the consolations of religion to his thirsty and supplicating subjects. Gentlemen, it is no wonder that those who searched after democratic equality should be the foes of religion. Religion is the genuine equality of mankind. It is the poor man's friend. During the troubles of this life it

renders him content with the lot of inferiority which is the condition of his nature, and in the last awful hour of existence it puts him upon a level with the highest and most exalted.

[From his speech for the prosecution at the trial of some of the "Threshers"—a secret society guilty of agrarian outrages. Sligo, Dec. 5, 1806.]

The Irish and James II.

But in unhappy Ireland the exiled king was the professor and patron of the religion to which they were enthusiastically devoted. He must be a preposterous critic who will impute as a crime to that unhappy people that they did not rebel against their lawful king, because he was of their own religion, even if they had been so fully admitted to the blessings of the British Constitution as to render them equally alive to the value of freedom. They seemed, therefore, by the nature of things almost necessarily thrown into a state of resistance. Nothing could have saved them from it but so strong a love of abstract freedom as might subdue the principles of loyalty and the feelings of religion. No candid man can lay so heavily on poor human nature, nor fairly say that he thinks worse of the Roman Catholic for having on that day abided by his lawful sovereign and his ancient faith. What was the result? They were conquered—conquered into freedom and happiness—to which the successful result of their ill-fated struggles would have been destructive. There is no rational Roman Catholic in Ireland who does not feel this to be the fact. Even the name of the exiled family is now unknown; the throne rests on the firm basis of the unanimous recognition of the entire people. The memory of their unfortunate struggles is lost in the conviction of the reality of those blessings which have been derived from their results equally to the conqueror and to the conquered.

[Bottle-Riot Trial, arising out of the prosecution of some of the Orange party for throwing a quart bottle at the Lord-Lieutenant, the Marquis Wellesley, while attending the Theatre Royal, Dublin, Dec. 14, 1822.]

CHARLES KENDAL BUSHE (1767—1843).

Styled by John Kemble "the most perfect actor off the English stage," Bushe was the son of the Protestant rector of Kilmurry, Co. Kilkenny, where the family had been established since the time of Charles II. From his father the future Lord Chief Justice of Ireland derived an ardent love of literature, and in the juvenile debates of the famous "Historical Society" of Trinity College he created a sensation by his ornate rhetoric, which, after his call to the Irish Bar (1793), developed into the noblest eloquence. Charles Phillips (*q.v.*), himself one of the first forensic orators, describes Bushe's eloquence as "genius adorned by every art that grace can furnish." In common with the vast majority of the leaders of the Irish Bar, Bushe opposed to the utmost the legislative union with Great Britain, which he ever regarded "as fatal to the greatness which Nature appeared to have intended that his country should attain."

By 1805 Bushe had reached such a standing and reputation at the Bar that not even his—to the Government—distasteful political views could any longer hinder his advancement, and in that year he was created one of the King's Serjeants-at-law and Solicitor-General. He held this latter office till 1822, when he was appointed Lord Chief Justice of Ireland. Upon relinquishing his high judicial position in 1841, his long and distinguished services were rewarded by the offer of a peerage—an honour he thought fit to decline. The few remaining months of his life were spent at Furry Park, his son's residence near Dublin, where he died, full of years and honoured by all classes of his countrymen, on July 7, 1843.

Bushe was pre-eminently the orator of *manner*. His eye, face and gesture lent expression to his words, and made him in very truth the Demosthenes of his country, and that, too, at a time when Ireland literally swarmed with orators of the very highest order. As an advocate at Nisi Prius he won verdict after verdict, for, in addition to his legal attainments and eloquent address, he

CHARLES KENDAL BUSHE.

possessed more than his share of native wit, which, in the Courts and out of them, was wont to set his auditors in a roar. As examples of this latter trait may be cited the following amusing instances: Being present one day at a dinner-party given by a Dublin alderman of strong Orange views, at a time when feeling about Catholic Emancipation ran very high, the giver of the feast imbibed so freely as to be ere long under the table. The Duke of Richmond, then Viceroy, reinstated the fallen Amphitryon in his chair, upon which Bushe remarked, "My Lord Duke, though you say I am attached to the Catholics, at all events I never assisted at the elevation of the Host"! One of the Chief Justice's relations, who was noted for his aversion from soap and water, asked his advice about the cure of a sore throat. "Fill a pail of hot water till it reaches your knees, then take a pint of oatmeal and scrub your legs with it for a quarter of an hour" was Bushe's suggestion. "Why, hang it, man," said the other, "that's washing one's feet!" "I admit, my dear fellow," retorted Bushe gravely, "*it is* liable to *that* objection!"

The following speech, describing the (qualified) forgiveness of a husband, is regarded as one of Bushe's finest flights of oratory:

"It requires obdurate and habitual vice and practised depravity to overbear the natural workings of the human heart. This unfortunate woman had not the strength further to resist. She had been seduced, she had been depraved, her soul was burdened with a guilty secret. But she was young in crime and true to nature. She could no longer bear the load of her own conscience. She was overpowered by the generosity of an injured husband more keen than any reproaches. She was incapacitated from any further dissimulation. She flung herself at his feet. 'I am unworthy,' she exclaimed, 'of such tenderness and such goodness; it is too late—the villain has ruined me and dishonoured you. I am guilty.' Gentlemen, I told you I should confine myself to facts. I have scarcely made an observation. I will not affront my client's case, nor your feelings, nor my own, by commonplacing upon the topic of the plaintiff's sufferings. You are Christian men. Your hearts must describe for me—I cannot; no advocate can. As I told you, your hearts must be the advocates. Conceive this unhappy nobleman, in the bloom of life, surrounded

with every comfort, exalted with high honours and distinctions, enjoying great prosperity, the proud proprietor, a few hours before of what he thought an innocent and amiable woman, the happy father of children whom he loved, and loved the more as the children of a wife whom he adored—precipitated in one hour into an abyss of misery which no language can represent, loathing his rank and despising his wealth, cursing the youth and health that promised nothing but the protraction of a wretched existence, looking round upon every worldly object with disgust and despair and finding in this complicated woe no principle of consolation except the consciousness of not having deserved it. Smote to the earth, this unhappy man forgot not his character—he raised the guilty and lost penitent from his feet. He left her punishment to her conscience and to heaven. Her pardon he reserved to himself. The tenderness and generosity of his nature prompted him to instant mercy. He forgave her, he prayed to God to forgive her. He told her that she should be restored to the protection of her father, that until then her secret should be preserved and her feelings respected, and that her fall from honour should be as easy as it might. But there was a forgiveness for which she supplicated and which he sternly refused. He refused that forgiveness which implies the meanness of the person who dispenses it and which renders the clemency valueless because it makes the man despicable. He refused to take back to his arms the tainted and faithless woman who had betrayed him. He refused to expose himself to the scorn of the world and his own contempt. He submitted to misery : he could not brook dishonour."

A Reply to Plunket.

The weight of the censure which has fallen on us is increased in proportion to the height from which it has descended. It has come from the counsel of a Chief Judge of the land, from the lips of one of the most illustrious individuals in this country, from a member of the United Parliament, from a man whose inimitable advocacy is but secondary to that high character for integrity and talent which he has established for himself and for our nation —upon whose accent the listening Senate hangs—with whose

renown the entire Empire resounds. From such a man censure is censure indeed! I call, then, upon him not to stop half way in the discharge of his duty. If we are tyrannical and oppressive—if we have revived and transcended the worst precedents of the worst days of prerogative—I call upon him in the name of justice and of our common country, I call upon him by every obligation which can bind a man, to impeach us. Let him not stop at the charge which he has made in this place: let him follow it up. *Non progredi est regredi*: He must either with shame give up this unjust attack upon the servants of the Crown, or he must follow up his duty, as a Member of Parliament, and carry us before the bar of the Commons. . . . Let him do so: we are not afraid—there, as least, the judicial determination shall not be upon the hearing of one party. Let him remember that the charge is illegality, Jacobinism and revolution, and that the crime is disrespect to what he calls the adjudication of the Court of Exchequer. The very neighbourhood of Westminster Hall ought to make him pause. What! state within its precincts that a Court of Exchequer in Ireland had made a solemn determination in a case where one party was not present, and where the other presided! The very walls of Westminster Hall would utter forth a groan at such an insult to the judicial character; the very monuments would deliver up their illustrious dead, and the shades of Mansfield and Somers and of Holt and of Hale would start from their tombs to rebuke the atrocious imputation! I must call upon him to go on; but if he should, I tell this Wellington of the Senate he will do so at the peril of his laurels. I tell him they are foredoomed to wither at the root.

[*Rex* v. *O'Grady*, Nov. 1816, Dublin. The above was Bushe's reply to Plunket's censure upon the Attorney-General, Saurin, for instituting proceedings against a supreme Judge for an act relating to the management of his own Court. Peel, then in Ireland, said of this retort: "No speech suffers so much from being reported as Bushe's, as he is a consummate master of oratory."]

THOMAS GOOLD (1766?—1846).

To play the combined rôle of the Admirable Crichton and leader of fashion in Dublin at the close of the eighteenth century was the early ambition of this distinguished advocate, who, though he achieved for a brief space a sort of Ouidaesque-hero kind of celebrity, had sense enough to relinquish the impossible in good time and to apply himself seriously to his profession, the Bar. Like most fluent speakers, he practised chiefly on the Nisi Prius side of the Courts, of which he quickly became one of the leaders. A pamphlet in defence of Burke's "Reflections on the French Revolution" brought him the patronage of that great man, but the solid good that might have resulted from it was frustrated by the Beresford family, which then, and for long afterwards, virtually ruled Ireland. Though a Protestant, Goold, in common with most of the wearers of the long robe at that time, was vehemently opposed to the Union, and his speech on the subject, which was delivered at a meeting of the Bar of Ireland convened at Dublin (1799?), must be regarded as one of the masterpieces of native eloquence in opposition to that measure. In the Court of Common Pleas Serjeant Goold—he subsequently became one of the King's Serjeants-at-law in Ireland—was considered as the foremost of the recognised gladiators of the forensic arena, and, in truth, his brilliant, if occasionally abrupt and violent, oratory, set off by the inimitable puns of the presiding Judge, Lord Norbury, must have made that quarter of the Irish Temple of Themis an absorbing place. There is an interesting portrait of this many-sided man—who is said to have been the best Nisi Prius lawyer that ever held a brief in Ireland—in Sir Jonah Barrington's "Secret Memoirs of the Union," a work which, like Sheil's "Sketches," is invaluable for the light it throws on the political, legal and social annals of this period. It reveals the subject of this notice as a great and resourceful orator—a man of infinite self-reliance and great honesty of purpose. Indeed, much of his great success with juries arose from this last trait. It forced itself, so to speak, upon their notice, and convinced them

that the cause of the advocate was also that of justice and common sense.

The Self-protection of a Free State.

I now come to consider the question of protection which the advocates of the Union say we receive from Great Britain; and for which (as one ground of argument) we are called upon to surrender our Constitution. I am now only speaking of that protection which the fleets of Great Britain give to our commerce and manufactures, for, as to any other protection, I hold it out of the case. I am speaking the proud constitutional language of your patriots Grattan and Flood, not many years back—I say there is but the shadow of liberty in a State which cannot protect itself. I am here speaking of foreign aggression—I am thankful and grateful for the services of Great Britain in the moment of domestic misfortunes—I say, then, that the State that is not competent to its own protection is competent to claim no one right of a free State—and even on this ground the history of this country gives a picture that my mind never contemplates but with emotions of rapture. I never have read of the exertions of a brave and generous people, either in the defence of their liberties or for the recovery of them, that my mind did not make a comparison favourable to the volunteers of Ireland.

A City of the Past.

Mark the curious traveller whom the history of your former splendour and your calamities may hereafter tempt to your shores. Mark him, while casting his eyes around, he marches in sepulchral silence through your living streets, hearing naught but the raven, seeing naught but depopulated magnificence! . . . *That*, sir, *was* the Parliament House: for you must know that Ireland had once a parliament. Mark him looking eastward and catching, through the frightful vista of ruin and desolation, that dumb but eloquent token of commercial prosperity! What is that? *That*, sir, *was* the Custom House: for you must know that Dublin one had trade!

[From his address (to the Irish Bar?) on the projected Union, Dublin, 1799.]

JAMES SCARLETT, LORD ABINGER (1769—1844).

THIS consummate lawyer was in many respects a spoilt child of fortune. The second son of a wealthy Jamaican landed proprietor, he entered upon his long and distinguished career with those natural abilities and affluent circumstances which so greatly tell in the struggle for fame and position. From Trinity College, Cambridge, he passed to the Inner Temple, and after his "call" in 1791 he joined the Northern Circuit. The mystery of Scarlett's ascendancy over judges and juries alike gave rise to much speculation, and, of course, to no little professional jealousy, though the phenomenon appears to be capable of a very simple solution. During his forty-three years as a pleader this great advocate invariably mastered every brief submitted to him and, with an honesty that did him infinite credit, he refused to accept more retainers than he could really attend to. This rule, joined to an excellent knowledge of law and consummate advocacy, soon made Scarlett one of the foremost leaders of the day. His method of dealing with juries was the highly practical one of selecting the very best argument on his client's behalf and driving it home with all the ability and force at his command. Such conduct naturally gained for him a great and well-deserved reputation for ability—a reputation which was worth a whole gamut of rhetorical expedients. He did not, however, despise oratory. His fine presence, musical voice and careful diction were scarcely less appreciated than his strict attention to facts, and some of his speeches are among the finest specimens of forensic eloquence extant. Indeed, that delivered by him in the case of *Cobbett* v. "*The Times*" (an action for libel), in which he appeared for the defendants, was pronounced by no less a critic than S. T. Coleridge to be "worthy of the best ages of Greece or Rome"* As Member of Parliament

* "Table Talk," June 29th, 1833.

for Peterborough, Cockermouth and Norwich successively, he laboured to promote—in conjunction with the noble and enlightened Romilly—those multifarious reforms in the criminal code which ere long resulted in making it from one of the worst to be one of the most humane in Europe. As Lord Chief Baron of the Exchequer, to which high office he was promoted in 1834, his success was not great, for he carried to the Bench much of the habit of advocacy which had rendered him so pre-eminent at the Bar, and juries often showed their resentment at this by returning verdicts not in accordance with judicial direction. Lord Abinger—he was created Baron Abinger of Abinger, Surrey, in January, 1835—was among the many great lawyers who died in harness, his death occurring at Bury St. Edmunds on April 7, 1844, while attending, in his judicial capacity, the Spring Assizes. Of his several sons, perhaps the most famous was the late General Sir James Yorke Scarlett, K.C.B. (1799—1871), who led the heavy cavalry charge at Balaclava.

The Law of Public Meetings.

With respect to public meetings, it may be necessary that I should say a few words, and few they shall be, in the outset, as to my conception—under correction of his Lordship—of what constitutes a legal meeting in this country. It is undoubtedly the privilege of the people of England, stating the proposition broadly, and in an unqualified manner, to meet to consider of public grievances, and to seek the lawful means of redress. But the meetings of that description known to the Constitution, and known to the practice of former ages, have been meetings either of counties or of towns, of corporations, of particular districts, or of particular classes of individuals, united by one common interest, in the pursuit of one common object—as, for example, if a particular trade be affected by a particular law, no question but those who are engaged in that trade have been accustomed to meet, and have a right to meet, to discuss that grievance and to obtain lawful means of redress. If a particular class of individuals resident in any place are affected by any private or public grievance they may assemble in like manner and for the same purpose. The inhabitants of a county assembled by the Lord

Lieutenant of the county or the Sheriff or otherwise, as the case may be, may have to consider a grievance affecting their particular interests or the public at large. It has been the practice and is sanctioned by the Constitution that they should so assemble to present any petition to the Throne or to either House of Parliament. But I have never yet heard it stated by any lawyer, and I trust I shall never hear it decided by any Judge, that it is a part, or ever was a part, of the law and Constitution of this land that any individuals, be they who they may, should have a right to assemble all the people of England in one place, there to discuss public grievances or the nature of the Constitution, and to come to resolutions for the purpose of obtaining redress or alteration.

[From the opening speech for the Crown, *Rex* v. *Hunt and others*, York, March 16, 1820.]

The Law of Conspiracy.

The law respecting conspiracy is severe enough in its nature. It would, indeed, be unfortunate if that peculiar crime were to be adopted as an analogy to bestow a new character of severity upon the trial, the punishment or the construction of any other crime. What is conspiracy? It is the agreeing together of a number of individuals either to do some illegal act or to do some lawful act by unlawful means, which is, perhaps, much the same thing. Suppose a case where the only evidence of conspiracy was that of a witness, an accomplice, who was present at the act of agreeing together and that no overt act can be proved. Does it not appear manifest that in such a case you could lay the venue in that county only where the act of conspiracy took place? As, for example, if I could produce one of a dozen men who met together and agreed to make that noise near this Court [the works going on in Westminster Hall for the Coronation of George IV.] which, in defiance of your authority, now interrupts your proceedings, and prevents the possibility of your Lordships hearing me or each other; though they had never committed the overt act under which I am now labouring most severely, yet upon his evidence they might have been tried in Middlesex and there only. But mark, the law says that upon a charge of conspiracy you need not prove the particular fact of conspiracy.

But upon proof of divers acts all tending to one common end, you may call upon a jury to presume a conspiracy for the accomplishment of that end, though you cannot by evidence exhibit the actual scene of conspiracy in any particular county. Therefor, if you can prove by a number of overt acts distinctly affecting each individual charged, that all must have breathed together one common design, you may prosecute in the county where the overt acts were done though you cannot assign any place where the parties met together, because the crime of conspiracy is a crime which the parties carry about with them wherever they carry their criminal designs into effect.

[Speech before the Court of King's Bench, on a motion for a new trial, *Rex* v. *Hunt.*]

DANIEL O'CONNELL (1775—1847).

O'CONNELL's name stands forth so prominently on the political horizon as the "Liberator of Ireland" that his fame as a brilliant forensic orator has become somewhat obscured. Yet he was during many years one of the first leaders of the Irish Bar, and that, too, at a time when the Courts of the sister isle teemed with forensic talent of the first order. Born at the ancestral seat of Darrynane Abbey, Kerry, of a very ancient estated family, O'Connell received his education at the English colleges of St. Omer and Douay, returning home in 1792 with impressions of the French Revolution which gave him a horror of bloodshed and anarchy that lasted for the rest of his life. Being destined for the Bar, which had recently been opened to Catholics, he kept his terms at Lincoln's Inn, meanwhile studying Espinasse on "Trials of Nisi Prius" and other text-books with great diligence, and resolving "never to fill a subordinate place in my profession." He was duly "called" at the King's Inns, Dublin, in 1798, the year of the rebellion. O'Connell's commanding figure, fluent oratory and great natural talents soon brought him a large practice both in Dublin and on the Munster Circuit. He was, however, no mere successful rhetorician. He had ever a thorough grasp of procedure and law and the determination that gave the assurance of victory to nearly every cause he undertook. His powers of persuasion were such that he could convince "a dozen miserable corporation hacks" that the honour of their country was concentrated in their persons, or lead the most prejudiced jury to imagine that "the eyes of Europe were upon them"! On the other hand, his Bar-oratory gave a distinguished critic and colleague the impression that, though of a high order, it lacked the necessary element of true greatness.* But in the field of politics it was far otherwise. *There* O'Connell was in his real sphere. He felt that he was at once the champion of his

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* Sheil.

country's faith and freedom, and, in consequence, his speeches are almost invariably masterpieces of reasoning and eloquence.

Such being the case, it was not long before the successful advocate of the Four Courts became known throughout Europe as the Tribune of the Irish people. By 1813, O'Connell was virtually the leader of the Catholic Emancipation party, which soon became the principal factor in British politics outside Parliament. A philippic which he delivered against the "beggarly corporation" of Dublin, then the great Orange stronghold, involved him in a duel with the fire-eating D'Esterre, who was mortally wounded. Filled with remorse, O'Connell pledged himself against duelling in the future, and provided for the daughter of his unfortunate adversary. The "Catholic Association" of 1823, with its "Rent," subscribed mainly by the peasantry, made the Liberator a still more formidable power and brought victory within sight. In July, 1828, he stood for Clare against Mr. Vesey Fitzgerald, and was elected amidst tumultuous scenes of enthusiasm. The House of Commons rejected his claim after O'Connell had refused the oaths then required, but his speech explaining this course re-echoed throughout the world. The claims of British Catholicism could no longer be resisted, the Emancipation Act was passed, and O'Connell took his seat for Clare, which he afterwards exchanged for Waterford.

Such a triumph was enough for any man, and it is probable that, had he been left to himself, the Liberator would have been content to rest satisfied with so stupendous an achievement. But just as even Napoleon was unable to subdue entirely the aggressive spirit of the Revolution, so O'Connell now found himself forced by well-nigh irresistible circumstances to embark upon the Repeal of the Union crusade. Ireland was no longer the land of "hereditary bondsmen" she had been in 1800. The struggle for emancipation had politically educated the people. Tens of thousands of her sons were inured to war in the campaigns of the Peninsula and Waterloo. A vast multitude cried aloud for "a Nation once again!" O'Connell clearly saw that the new issues lay between constitutional repeal and revolution of the continental type. A professed loyalist by tradition, and imbued with the conservative sentiments of the landed gentry, he chose the former course. Needless to say, the movement, with its

"Monster Meetings" at Tara and elsewhere, and almost ceaseless round of agitation, ended in disaster. O'Connell, broken in health and the object of a State prosecution for "causing disaffection," was sentenced to a year's imprisonment. The conviction was quashed on legal grounds by the House of Lords, but the days of the great Tribune were numbered. Always deeply religious, and stricken to the heart by the approaching famine and the revolutionary menaces of the "Young Ireland" extremists, O'Connell now resolved upon a pilgrimage to Rome. He never reached the Eternal City, dying at Genoa on May 15, 1847. His obsequies at Glasnevin, Dublin, partook of the nature of a national tribute. Upon the Liberator's exalted forensic talents, we have already remarked. But great as these were, they were surpassed by his disinterestedness. In the pursuit of his service to his country, he sacrificed his professional prospects—including some of the highest posts of the judiciary—and a Bar-practice that brought him £8,000 a year. He abandoned, too, those numberless opportunities of leisure and social amenity which may be regarded as not the least part of the reward of every successful career.

An Impersonal Libel.

Gentlemen.—This is *not* a libel on Charles Lennox, Duke of Richmond, in his private or individual capacity. It does not interfere with the privacy of his domestic life. It is free from any reproach upon his domestic habits or conduct. It is perfectly pure from any attempt to traduce his personal honour or integrity. Towards the man there is not the least taint of malignity. Nay, the thing is still stronger. Of Charles, Duke of Richmond, personally, and as disconnected with the administration of public affairs, it speaks in terms of civility and even respect. . . . The Duke is here in this libel, my Lords, in this libel, gentlemen of the jury, the Duke of Richmond is called an honourable man and a respectable soldier! Could more flattering expressions be invented? Has the most mercenary Press that ever existed, the mercenary Press of this metropolis, contained, in return for all the money it has received, any praise which ought to be so pleasing—"an honourable man and a respectable soldier"? I do, therefore, beg of you, gentlemen, as you value your honesty,

to carry with you in your distinct recollection this fact, that whatever evil this publication may contain, it does not involve any reproach against the Duke of Richmond in any other than in his public and official character.

[Defence of John Magee for a libel on the Duke of Richmond, Dublin, 1813.]

The Army in Ireland.

Have you heard of Abercrombie the valiant and the good—he who, mortally wounded, neglected his wound until victory was ascertained; he who allowed his life's stream to flow unnoticed because his country's battle was in suspense; he who died the martyr of victory; he who commenced the career of glory in the land and taught French insolence, than which there is nothing so permanent—even transplanted it exhibits itself to the third and fourth generation—he taught French insolence that the British and Irish soldier was as much his superior by land as the sailor confessedly was by sea; he, in short, who commenced that career which has since placed the Irish Wellington on the highest pinnacle of glory? Abercrombie and Moore were in Ireland under Camden.* Moore, too, has since fallen at the moment of triumph. Moore, the best of sons, of brothers, of friends, of men—the soldier and the scholar—the soul of reason and the heart of pity. Moore has, in documents of which you may plead ignorance, left his opinion upon record with respect to the cruelty of Camden's administration. But you all have heard of Abercrombie's proclamation, for it amounted to that; he proclaimed the cruelty in terms the most unequivocal; he stated to the soldiery and to the nation that the conduct of the Camden administration had rendered the soldiery formidable to all but the enemy! Was there no cruelty in thus degrading the British soldier? And say, was not the process by which that degradation was effectuated cruelty? Do, then, contradict Abercrombie upon your oaths, if you dare; but, by doing so, it is not my client alone you will

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* John, first Marquis of Camden, Lord-Lieutenant of Ireland, 1795-98. He succeeded the popular Lord Fitzwilliam, whose conciliatory policy he completely reversed, and by his harsh, repressive measures did much to precipitate the rising of '98.

convict—you will also convict yourselves of the foul crime of perjury.—[*Ibid.*]

O Tempora, O Mores!

For my part, I frankly avow that I shudder at these scenes. I cannot without horror view this interfering and intermeddling with judges and juries; and my abhorrence must be augmented when I find it avowed that the actors in all these sad exhibitions were the mere puppets of the Attorney-General, moved by his wires and performing under his control! It is in vain to look for safety to person or property whilst this system is allowed to pervade our Courts. The very fountain of justice may be corrupted at its source, and those waters which should confer health and vigour throughout the land can then diffuse nothing but mephitic and pestilential vapours to disgust and to destroy. If honesty, if justice be silent, yet prudence ought to check these practices. We live in a new era—a melancholy era in which perfidy and profligacy are sanctioned by high authority; the base violation of plighted faith, the deep stain of dishonour, infidelity in love, treachery in friendship, the abandonment of every principle and the adoption of every frivolity and of every vice that can excite hatred combined with ridicule—all, all this, and more, may be seen around us; and yet it is believed, it is expected, that this system is fated to be eternal! Gentlemen, we shall all weep the insane delusion, and in the terrible moments of altercation you know not, you cannot know, how soon or how bitterly the ingredients of your own poisoned chalice may be commended to your own lips. [*Ibid.*]

RICHARD LALOR SHEIL (1791—1851).

THE patriot-orator of Ireland and the trusted Minister of the British Crown was born at Drumdowney, Co. Kilkenny, August 17, 1791. When about nine years of age he was placed at a school at Kensington, presided over by some French *emigré* priests, known as Les Pères da la Foi. He proceeded to Stonyhurst College, Lancashire, in 1804, entering the school "a dark, sallow, odd-looking boy," who spoke broken English—the result of his French tuition—and who took little or no part in games. The Latin authors and English composition were his favourite studies, and when he entered Trinity College, Dublin, in 1807, he was regarded as one of the best-informed undergraduates of his year. Having decided on the Bar as a career, he began his terms at Lincoln's Inn in 1810, but his tastes were really literary rather than legal. At the time it proved a great advantage, for his father, a merchant, having lost the bulk of his fortune, young Sheil turned to writing for the stage, and several plays of his as, "Evadne," "The Apostate," "Belamira," &c., were produced with marked success at Covent Garden. Sheil was called to the Irish Bar at the King's Inns, Dublin, in 1814, and soon his eloquence, spontaneous, fiery and richly imaginative, made him a great success both at the Four Courts and on the Leinster Circuit. He threw himself with ardour into the struggle for Catholic Emancipation, and before long became recognised as O'Connell's henchman. With the passing of the Emancipation Act (1829), however, Sheil considered his part as a nationalist played, and henceforth as Member of Parliament for such constituencies as Milborne Port, Co. Tipperary, and Dungarvan, he figured chiefly as a Whig politician. His services to the party were recompensed by a Commissionership of Greenwich Hospital, and later by the Mastership of the Mint. After his entry into politics, Sheil's practice as a barrister ceased almost entirely. He donned his Queen's Counsel's robes for the last time in 1844, when he appeared as leading counsel for the defence of John O'Connell, son of the "Liberator," at the Dublin State Trials of

that year, in connection with the "Monster" Repeal meetings. Sheil's address to the jury is described as containing "passages of the most transcendent beauty," but the speech failed to win a favourable verdict. In 1849 Sheil, who was prematurely broken down owing to ill-health and bereavement, received the appointment of British Minister to the Ducal Court of Tuscany, but did not long survive to enjoy the honour, dying at Florence in the May of the following year. His body was removed to Long Orchard, Tipperary, for interment. As a barrister, Sheil was never regarded as a learned lawyer. His gifts were rather rhetorical and literary, and in these he certainly surpassed. Most of his best speeches were carefully prepared, and as compositions they take a very high rank. Sheil's great defects as a speaker were a shrill voice and over-gesticulation—shortcomings which probably caused Christopher North to rate him far below Charles Phillips. In conclusion it may be remarked that Sheil is now chiefly remembered for his valuable and racy "Sketches of the Irish Bar," written in conjunction with Mr. W. H. Curran, and contributed to the "New Monthly Magazine." The "Sketches" throw a strong light on the social, political and legal history of Ireland during the first three decades of the nineteenth century, and though no doubt regarded, at first, merely as ephemeral literary contributions, have long come to be esteemed as a mine of information on the persons and events of the period of which they treat.

A Convict's Departure.

Most of you consider transportation a light evil, and it may be so to those who have no ties to fasten them to their country. I can well imagine that a deportation from this island [Ireland], which, for most of its inhabitants, is a miserable one, is to many a change greatly for the better! Although the Irish people have strong local attachments, and are fond of their fathers' graves—yet the fine sky and genial climate of New Holland afford many compensations. But there can be none for Matthew Hogan. He is in the prime of life, is a prosperous farmer, yet he must leave his country for ever; he must part from all that he loves and from all by whom he is beloved. . . . The prison of this town

will present on Monday next a very affecting spectacle. Before he ascends the vehicle that is to convey him for transportation to Cork, he will be allowed to take leave of his wife and children. She will cling to his bosom, and while her arms are folded round his neck—while she sobs in the agony of anguish on his breast—his children, who used to climb his knees in playful emulation for his caresses. . . . I will not go on with this distressing picture; your own emotions will complete it.

[From his speech at the Aggregate Meeting in Clonmel during the Assizes.]

Conspiracy and Unlawful Assemblies.

The defendants are indicted for conspiracy and nothing else. No counts are inserted for attending unlawful assemblies. The Attorney-General wants a conviction for conspiracy, and nothing else. He has deviated in these particulars from English usage. In indictments for a conspiracy, counts for attending unlawful assemblies are in England uniformly introduced. English juries have almost uniformly manifested an aversion to find men guilty of a conspiracy. Take Henry Hunt's case as an example. When that case was tried England was in a perilous condition. It had been proved before a secret committee of the House of Commons, of which the present Earl of Derby, the father of Lord Stanley, was the chairman, that large bodies of men were disciplined at night in the neighbourhood of Manchester and made familiar with the use of arms. An extensive organisation existed. Vast public assemblies were held, accompanied with every revolutionary incident in furtherance of a revolutionary object—yet an English jury would not find Henry Hunt guilty of a conspiracy, but found him guilty on the fourth count of the indictment for attending an unlawful assembly.

[From the speech in defence of John O'Connell, Court of Queen's Bench, Dublin, May, 1844.]

The Liberator in 1798 and 1844.

It was in 1798 that the celebrated man was called to the Bar who was destined to play a part so conspicuous on the theatre of the world. He was in the bloom of youth—in the full flush of

life—the blood bounded in his veins, and in a frame full of vigour was embodied an equally elastic and athletic mind. He was in that season of life when men are most disposed to high and daring adventure. He had come from those rocks and mountains of which a description so striking has appeared in the reports of the speeches which have been read to you. He had listened, as he says, to the great Atlantic whose surge rolls unbroken from the coast of Labrador. He carried enthusiasm to romance; and of the impressions which great events are calculated to make upon minds like his, he was peculiarly susceptible. He was unwedded. He had given no hostage to the State. The conservative affections had not tied their ligaments, tender but indissoluble, about his heart. There was at that time an enterprise on foot; guilty and deeply guilty, indeed, but not wholly hopeless. The peaks that overhang the Bay of Bantry are dimly visible from Iveragh. What part was taken in that dark adventure by the conspirator of sixty-nine? Curran was suspected; Grattan was suspected. Both were designated as traitors unimpeached; but on the name of Daniel O'Connell a conjecture never lighted. And can you bring yourselves to believe that the man who turned with abhorrence from the conjuration of 1798 would now, in an old age, which he himself has called not premature, engage in an insane undertaking, in which his own life and the lives of those who are dearer to him than himself, and the lives of hundreds of thousands of his countrymen would beyond all doubt be sacrificed? Can you bring yourselves to believe that he would blast the laurels, which it is his boast that he has won without effusion of blood—that he would drench the land of his birth, of his affections, and of his redemption, in a deluge of profitless massacre; and that he would lay prostrate that great moral monument which he has raised so high that it is visible from the remotest region of the world? What he was in 1798 he is in 1844. [*Ibid.*]

Irish Disunion and its Consequences.

If we [the Irish] were eight millions of Protestants—and heaven forgive me! there are moments when, looking at the wrongs done to my country, I have been betrayed into the guilty desire that

we were—but if we were eight millions of Protestants, should we be used as we are? Should we see every office of dignity and emolument in this country filled by natives of the sister island? Should we see the just expenditure requisite for the improvement of our country denied? Should we see the quit and Crown rents of Ireland applied to the improvements of Charing Cross or of Windsor Castle? Should we submit to the odious distinction between Englishmen and Irishmen introduced into almost every Act of legislation? Should we bear with an Arms Bill by which the Bill of Rights is set at nought? Should we brook the misapplication of a poor law? Should we allow the Parliament to proceed as if we had not a voice in the Legislature? . . . But we are prevented by our wretched religious distinctions from co-operating for a single object by which the honour and substantial interests of our country can be promoted! Fatal, disastrous, detestable distinctions! Detestable because they are not only repugnant to the genuine spirit of Christianity and substitute for the charities of religion the rancorous antipathies of sect, but because they practically reduce us to a colonial dependency, make the Union a name, substitute for a real union a tie of parchment which an event might sunder—convert a nation into an appurtenance, make us the footstool of the Minister, the scorn of England and the commiseration of the world. Ireland is the only country in Europe in which abominable distinctions between Protestant and Catholic are permitted to continue!

[*Ibid.* Loud applause in Court greeted this passage, and was continued for some minutes to the great annoyance of the Bench.]

The Union the Ruin of Ireland.

But, gentlemen, one could perhaps be reconciled to the terms of the Union, bad as they were, if the results of the Union had been beneficial to this country. We are told by some that our manufactures and our agricultural produce have greatly augmented; but what is the condition of the great bulk of the people of the country? which is, after all, the consideration that with Christian statesmen ought to weigh the most. The greatest happiness of the greatest number is a Benthamite antithesis, but there is a

great deal of Christianity condensed in it. When travellers from France, from Germany, from America arrive in this country and contemplate the frightful spectacle presented by the misery of the people, although previously prepared by descriptions of the national misery, they stand aghast at what they see, but what they could not have imagined. Why is this? If we look at other countries and find the people in a miserable condition, we attribute the fault to the Government. Are we in Ireland to attribute it to the soil, to the climate, or to some evil genius who exercises a sinister influence over our destinies? The fault, as it appears to me, is entirely in that system of policy which has been pursued by the Imperial Parliament, and for which the Union is to be condemned. Let me see, gentlemen, whether I can make out my case. I shall go through the leading facts with great celerity, but in such a case as this I should not apprehend the imputation of being wantonly prolix. Your time is, indeed, most valuable; but the interests at stake are inestimably precious, and time will be scarcely noted by you when you bear in mind that the effect of your verdict will be felt when generations have passed away—when every heart that now throbs in this great assembly shall have ceased to palpitate—when the contentions by which we were once agitated shall touch us no further; and all of us, Catholic and Protestant, Whig and Tory, Radical and Repealer and Conservative shall have been gathered where all at last lie down in peace together.—[*Ibid.*]

SIR THOMAS NOON TALFOURD.

SIR THOMAS NOON TALFOURD (1795—1854).

TALFOURD'S forensic triumphs are well-nigh forgotten, and the dramas, "Ion," "The Athenian Captive" and "Glencoe," which he wrote while a Templar and later, would probably interest a modern audience about as much as a Greek tragedy, yet his name will live as that of a great and benign personality, and, still more, as that of the friend and biographer of Lamb. Lamb, Leigh Hunt, Coleridge, Hazlett and Dickens were some of the meteors of the literary firmament in which the learned and accomplished lawyer moved, and he was beloved by them all. Even when still a boy reading the classics under the great Dr. Valpy, of Greek and Latin grammar fame, at the Reading Grammar School, young Talfourd showed the literary trend. His volume of verse not only created a sort of infant-prodigy reputation for the juvenile poet, but one of the poems—on the education of the poor—was regarded by mature critics as showing superior merits. Talfourd's sympathy with the unfortunate was a leading trait of his wholly lovable character, and he died with what was practically a plea for the alleviation of human misery on his lips. Between 1813 and 1821 Talfourd read law in the chambers of Joseph Chitty, the eminent special pleader. He not only drudged at his profession like a horse, but found time to address an able "appeal" to his Nonconformist brethren on behalf of Catholic Emancipation. Professional papers in the "Law Magazine" came from his pen, and showed how deep was his grasp of legal principles. He did not join the ranks of the Bar—at the Middle Temple—till 1821. Both on the Oxford Circuit and at the Berkshire Sessions, Talfourd's sound knowledge of law and his eminent qualities as an advocate soon brought him a large and lucrative practice, and in 1833 he received the serjeant's coif. Three years later his tragedy of "Ion" was produced by Macready at Covent Garden. This drama, based on a well-known play of Euripides, and appearing as it did in the last days of the classical supremacy, achieved a decided success. But though elegant and abounding in some passages of genuine pathos and

sentiment—this latter, a highly-rated quality in the thirties—the composition is rather a book to read than a play to see. Talfourd himself, however, regarded it as a triumph of dramatic writing, and there are amusing stories told of his going to witness the production of it at theatre after theatre! The estrangement which arose between the lawyer and his old friend Mary Russell Milford over a literary jealousy arising out of their rival plays deserves a place in Disraeli's "Quarrels of Authors."

Almost every great advocate is associated with some cause of supreme importance. That of Talfourd was his defence of Edward Moxon, the poet-publisher, for issuing the complete works of Shelley, some of whose effusions are undeniably atheistical. The case was a test one—set on foot to prove the impropriety of prosecuting for mere literary opinion—at the instigation of a certain Henry Hetherington, who was himself at the time on bail for publishing "Letters to the Clergy of all Denominations," alleged to contain libels on the Old Testament. Talfourd eloquently defended poetry from the charges levelled against it, pointing out, what is indeed obvious, that whereas Shelley's opinions, however distasteful, are mere incidents to his verse, Hetherington's assertions were professedly intended to bring religion into contempt. Shelley, as a writer of irreverences, is, according to Talfourd, no worse than Homer, Virgil, Horace and even Shakespeare and Milton, who have each set forth obnoxious tenets, yet whose works are eulogised everywhere as imperishable literary monuments. Considering the motive of the prosecution and the logic of the defence, it is certainly surprising that Talfourd's client should have been convicted.

The serjeant's forensic labours were fittingly rewarded by his elevation to the Bench in 1849 as one of the justices of the Court of Common Pleas. He brought to the judicial dignity the same high qualities that had won for him such distinction at the Bar, but his career as a judge was destined to be but brief. While delivering his charge to the Grand Jury at the Stafford Assizes on March 13, 1854, and commenting on the prevailing ignorance and intemperance of the poorer classes and the social abyss that divided the upper and lower sections of society as the most fruitful causes of contemporary crime, he was seized with apoplexy and died within a few minutes. The premature decease

with painful steps its narrowing course to its farthest spring, because black rocks may encircle the spot whence it rushes into day, and demon shapes—frightful, but powerless for harm—may gleam and frown on us beside it?—[*Ibid.*]

Objectionable Passages to be Found in Many of even the Greatest Literary Productions.

What can they who sell "The History of the Decline and Fall of the Roman Empire" hope from the prosecutor of "Queen Mab"? In that work are two celebrated chapters sparkling with all the meretricious felicities of epigrammatic style which, full of polished sarcasm against infant Christianity, are elaborately directed to wither the fame of its martyrs and confessors with bitterest scorn—two chapters which, if published at a penny each, would do more mischief than thousands of metaphysical poems; but which, retained in their appropriate place, to be sought only by readers of history, may serve the cause of truth by proving the poverty of the spite by which it has been assailed, and find ample counterpoise in the sequel. The possibility that this history should be suppressed by some descendant of Gibbon, who might extravagantly suppose it his duty to stifle cold and crafty sneers aimed at the first followers of Christ, was urged—and urged with success—against me, when I pleaded for the right of those descendants to the fruits of the labours of their ancestor. Yet, if you sanction this attempt, any Hetherington may compel by law that suppression, the remote possibility of which has been accepted as a reason for denying to the posterity of the author a property in the work he has created.

* * * * *

Prosper this attempt, and what a field of speculative prosecution will open before us! Every publisher of the works of Voltaire, of Volney, of Hume—of the classics and of their translations—works regarded as innoxious because presented in a certain aspect, and offered to a certain class, will become liable to every publisher of penny blasphemy who may suffer or hate or fear the law! Not of such only, but of every small attorney

in search of practice, who may find in the machinery of the Crown-office the facilities of extortion.

* * * * *

Refuse, then, to set the fatal precedent, which will not only draw the fame of the illustrious dead into question before juries without time to investigate their merits, which may not only harass the first publishers of these works, but which will beset the course of every bookseller, every librarian throughout the country with perpetual snares, and make our criminal courts the arena for a savage warfare of literary prosecutions! Protect our noble literature from the alternative of being either corrupted or enslaved! Terminate those anxieties which this charge—so unprovoked, so undeserved—has now for months inflicted on the defendant and his friends, by that verdict of *not guilty* which will disappoint only those who desire that cheap blasphemy should have free course, which the noblest and purest and most pious of your own generation will rejoice in, and for which their posterity will honour and bless you!

[*Ibid.*]

CHARLES PHILLIPS (1787?—1859).

THIS consummate master of gorgeous rhetoric was born at Sligo, where his father was in practice as a local barrister. After the rudiments of a classical education under the Rev. James Armstrong, the future orator entered Trinity College, Dublin, where he graduated. He was called to the Irish Bar in 1812, joining that of England at the Middle Temple in 1821. His genius for florid oratory early manifested itself, and in his own country he won a great reputation in such cases as actions for seduction and breach of promise, where the "passions" are more to be relied upon than the "points"! Though a Protestant, Phillips threw himself with ardour into the agitation for Catholic Emancipation, and more than one of his finest speeches were delivered in furtherance of the national cause. In England, however, Phillips, as a barrister, was not an immediate success. The per-

fervid descriptions and resplendent imagery, so dear to the heart of the impressionable Celt, failed at the outset to have a corresponding effect on the more stolid juries of the English metropolis. The newcomer was even sneered at by some of his colleagues as "Councillor O'Garnish," and, on one occasion, when pitted against Brougham, the latter nearly overwhelmed his Hibernian adversary by referring to the "horticultural address of my learned friend"! But Phillips's mode of advocacy was genuine eloquence, and he eventually came to be regarded as one of the greatest forensic orators of the day—"worth a dozen Sheils," as Christopher North phrased it; an approval, however, which was not echoed by Sir James Mackintosh, who described the speeches of the young Irish meteor as "pitiful to the last degree!" Phillips chiefly practised in the criminal courts, but his knowledge of law never rose above mediocrity; while it is certainly amazing to find him among the number of those who disapproved of Mr. Ewart's Felon's Counsel Bill, extending the full privilege of legal defence to persons charged with felony.* When

* See p. 22.

once pased, however, the Act was taken full advantage of by the subject of this notice. His practice at the Old Bailey greatly extended, and his oratory always attracted a very full attendance of "the general public." His most famous case was, undoubtedly, the trial of the Swiss valet François Courvoisier for the murder of Lord William Russell, already remarked upon (p. 24). The story of Phillips's indiscretion in connection with this case need not be repeated at length. But the whole affair serves to illustrate, yet again, the wisdom of that rule of our Bar which discourages interviews between counsel and client in criminal prosecutions as tending to destroy the impersonal nature of advocacy, besides frequently putting the pleader himself into a situation of great embarrassment.* The Courvoisier trial was the last case of importance in which Phillips was engaged, and in 1842 he was appointed a Commissioner of Bankruptcy at Liverpool by Lord Brougham. From the first, Phillips had conceived a profound admiration for the "Solon, Lycurgus, Demosthenes" of the British Senate and Courts, while Brougham, on his side, had a real appreciation of the undoubted abilities that underlaid the Irish advocate's apparently merely superficial qualities. Later, Phillips became Commissioner of the Insolvents' Court, London, but beyond his excellent "Curran and his Contemporaries," and his "Speeches," first published in 1817, did little to extend his literary reputation. The "Collected Speeches," to give them their full title, are a treasury of that rich word-painting, fiery denunciation and pathetic description which made the speaker so famous during his day. They must long take a high place among the foremost examples of declamatory eloquence, and on this account should be studied by all who aspire to excel in this, the not least difficult, branch of the orator's art.

No word-for-word report of Phillips's great speech at the Courvoisier Trial has, apparently, been preserved. At least, it

* On the third day of the trial Phillips had an interview with Courvoisier who made a clean breast of his guilt. Yet, notwithstanding this admission, Phillips, in addressing the jury, reminded them that the author of the crime was known to God alone, and expressed a hope that the accused was innocent!

LORD LYNDHURST.

JOHN SINGLETON COPLEY, LORD LYNDHURST (1772—1863).

In a moment of political excitement O'Connell—forgetting that he himself championed the cause of a long-suffering democracy—once taunted the subject of this notice with the low extraction of his family. His answer came in a philippic which was likened to that of Cicero against Catiline. For Lord Lyndhurst was one of those intellectual giants who—sneered at by the shallow and unthinking as "Victorians"—were really the builders of that mighty epoch upon whose capital, in every sense of the term, we of this generation appear to be drawing. Born at Boston, Massachusetts, four years before the Declaration of American Independence, the son of the famous artist, John Copley, R.A., the future Chancellor came to this country in 1775 and, after a preliminary classical education by Dr. Horne at Chiswick, became a student of the Royal Academy under Sir Joshua Reynolds. The artistic genius of his father, however, did not prove hereditary, and in 1790 the son entered Trinity College, Cambridge. Being one of those fortunate students who shine both in classics and mathematics, young Copley had literally the scholastic world at his feet. From Trinity he passed to Lincoln's Inn, and within nine years of his "call" was promoted to the serjeant's coif (1813). But such rapid success was not the result of mere opportunity or cleverness. Intellectual ability was united with an infinite capacity for taking pains. This was especially shown in his conduct in the famous Heathcote Case, involving patent rights. The learned serjeant went up to Nottingham, mastered the intricacies of the spinning-machine, which formed the principal motive of the suit, and thus was able to prove in Court certain details which went a long way towards establishing the justice of his client's contention. It is not often that successful advocates on the *Nisi Prius* side excel as counsel in criminal trials, but Copley's defence at the Old Bailey of Thistlewood and Watson for treason in 1817 was a masterly piece of forensic endeavour

and one deservedly crowned with success. Canning selected him as Chancellor in his Administration, 1827, and he again filled this, the highest office of the profession, in 1834 and 1840. Though a Conservative by necessity rather than by choice, he advocated such liberal measures as the removal of the Jewish political disabilities and the increase of the Maynooth Grant. He had a minute knowledge of Austrian and Prussian history, and a full sense of our military unpreparedness in view of the ever-increasing size and efficiency of the Continental armies. Indeed, this astonishing man preserved to the very end of his long life of ninety-two years a masculine vigour of mind, and one of his last speeches—that on the Bill for establishing the validity of wills of personal estate—was a model of lucidity and grasp of principle. He had, ever since his entry into public life, been remarkable for his oratorical powers. "You can hear a pin fall when he is addressing the House; you may imagine yourself listening to—looking at—Cicero," remarked a writer with reference to him, in 1833; and even his great enemy, Lord Campbell, who was present at the Thistlewood-Watson Trial already mentioned, described Copley's address to the jury as "one of the ablest and the most effective ever delivered in a Court of Justice." This being so, it is certainly a matter for regret that such a piece of oratory does not appear to have been preserved as uttered, for Barton's report of the trial, published the same year, merely gives the substance of the speech, which was cogent enough to obtain an acquittal for those on whose behalf it was delivered, and excellent enough to win the unqualified praise even of an otherwise hostile critic. The specimen of Lord Lyndhurst's eloquence here given is taken from the conclusion of his speech, as Attorney-General, in the famous case of the "Bill of Pains and Penalties" against Queen Caroline.

The Tactics of the Opposition.

Your Lordships have been told by one of my learned friends that, if you passed this Bill into a law, you would commit an act of suicide. By another of my learned friends you were told that if you passed this Bill, it would be at your peril! The words hung sufficiently long upon my learned friend's lips to be clearly

understood, but they were afterwards affectedly withdrawn. I was astonished to hear such arguments urged—arguments which could not serve, but might have an injurious effect on, the case of the illustrious individual in whose behalf they were urged. I know, my Lords, that your Lordships dare not do anything unjust, but I know at the same time that you will do what the ends of justice require, without regard to any personal consequences that may follow. But, my Lords, it is not in this place only that such arts have been resorted to. A similar course has been followed out-of-doors—every attempt has been made to intimidate your Lordships and overawe your proceedings! Even the name of her Majesty herself has been profaned for base and factious purposes! In her Majesty's name, but undoubtedly without her consent, attacks have been made upon all that is sacred and venerable. The Empire, the Constitution, the Sovereign, the Hierarchy—every order of the State—all has been darkly and malignantly attacked under the shield of her Majesty's name. . . . In such a case one might well expect the commencement of a new era; but I say again, I impute no such motives to her Majesty. I say, my Lords, that if, in looking to the whole of the evidence, you shall have the strongest moral conviction on your Lordships' minds of her Majesty's guilt, but yet feel that there has not been such evidence brought forward as would lay the legal foundation of guilt, in that case, my Lords, you will throw out this Bill. You will say to her Majesty, in the language of my learned friend, Mr. Denman, "Go thou, and sin no more!"* But, my Lords, if, on the other hand, looking with that calmness and impartiality which the great importance of this case requires, you find that the case is borne out by the strongest, fullest and most satisfactory evidence, if no doubt hangs upon the minds of your Lordships, then, my Lords, knowing the Tribunal I have been addressing, I am sure you will pronounce your decision on this great and momentous question with a firmness consonant to your high and exalted station.

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* See p. 26, *note.*

HENRY, LORD BROUGHAM AND VAUX (1778—1868).

To be continually before the public gaze and to shine in almost every department of human endeavour was the somewhat lofty ambition of Henry Brougham throughout his long life of ninety years. It must, however, be allowed that his abilities were fully commensurate with his aims. As a young student at Edinburgh University he wrote an essay on "Light," which found a place in the Transactions of the Royal Society. At the age of twenty-four he was the prime mover of the talented literary coterie that founded the "Edinburgh Review," and henceforward was always ready to write any or every article that might be required for its pages. From the Scottish Bar he joined that of England at Lincoln's Inn (1808), and two years later entered Parliament for the pocket-borough of Camelford. Unlike most lawyers, he was an immediate and decided success in the House, delivering frequent and vigorous speeches against the slave trade and well-nigh supplanting the leader of the Opposition. The commercial classes quickly came to regard him as their chief spokesman against the "Orders in Council," which, designed to counteract effectively Napoleon's famous "Berlin Decrees," were soon discovered to be almost as disastrous to British as to French trade. When Leigh Hunt and his brother were prosecuted for their article in the "Examiner" denouncing the inhuman Army floggings of the period, Brougham was retained for the accused, and his address to the jury was not so much a brilliant defence of the offending journalists as an indictment of a national scandal.

Brougham's name will always be associated with the trial of Queen Caroline, the unhappy Consort of George IV. The royal pair was married in 1795, but separated by mutual consent not long after the birth of their only child, the Princess Charlotte. The Princess of Wales, as she then was, lived for a time at Blackheath, but withdrew to the Continent in 1814. She sojourned at Milan, Como, Athens, Jerusalem and various other

LORD BROUGHAM AND VAUX.

places abroad, whence reports detrimental to her moral character came from time to time to England, the most serious of these being rumours of her guilty affection for her Italian chamberlain, Bartolomeo Bergami. Shortly after his accession, the King sent a message to the Lords ordering them to commence an inquiry into the Queen's conduct. Various pieces of evidence, principally collected by Sir John Leach, were forthcoming. A "Bill of Pains and Penalties" was introduced by the Premier, Lord Liverpool, at the instance of the King (July, 1820), both for the purpose of depriving the Queen of her title and privileges and for the dissolution of the royal marriage. The greatest excitement prevailed throughout the country, the common people being for the most part violent partisans of the Queen. So strong, indeed, did the popular feeling become that the Ministers were more than once publicly insulted, while the Queen, who had now returned to London, had only to appear in the streets to be followed by vast, cheering crowds. As her Attorney-General in opposition to the Bill, Brougham became at once a popular idol, a kind of John Wilkes in wig and gown, in whom was personified in the eyes of the masses not the liberty of a nation, but the honour and dignity of a cruelly-maligned and long-persecuted Princess. His speech before the Lords made his name a household one throughout Europe; but if it be true, as alleged, that at the commencement of the case he knowingly withheld from his illustrious client the King's offer of a pension of £50,000 a year, if she would consent to remain abroad, then his conduct admits of no excuse. Like Victor Hugo, intense self-conceit was ever Brougham's besetting sin, and it can well be imagined that to such a man the enormous notoriety offered by the Queen's trial must have proved irresistible. Be this as it may, Brougham's masterly advocacy caused the case against the Queen to be abandoned—though not before the evidence adduced had done irremediable harm to her reputation, which, joined to other griefs and vexations, undoubtedly hastened on her death a few months later.

When Lord Grey took office in 1830 the country had entered upon the throes of the mighty Reform agitation which was to result in the disfranchisement of some fifty-six rotten boroughs and the transference of the chief political power from the aristocracy to the middle classes. As an enthusiast for all kinds of

amelioration, or what passed as such, Brougham was created Lord Chancellor in the new Cabinet, with the title of Baron Brougham and Vaux. The Court of Chancery, thanks to the incurable indecision of Lord Eldon, had long become a by-word for expense and procrastination. The new Keeper of the Seals not only speedily cleared off all outstanding arrears, but successfully carried through a variety of much-needed reforms, including the substitution of the Judicial Committee of the Privy Council for the old and cumbrous Court of Delegates, and, what was perhaps even more necessary, the establishment of the Central Criminal Court. The indefatigable Chancellor even found time to revive the subject of legal education; and, stimulated by his magnetic influence, the Inns of Court began to awaken from their centuries of lethargy. Readerships ceased to be honorary offices, and examinations in Roman and English law and constitutional history actually came to be regarded as at least as necessary for a "call" as dining in hall and the payment of certain fees!

Brougham's tenure of the Seals ended with the expiration of the Grey Ministry (1834). With this event the most useful portion of his career may also be said to close, though for nearly thirty years longer he was to stand forth a commanding figure in the political and social world. Nothing was too much or too little for this protean personality. When the Revolution broke out in France in 1848 Brougham actually meditated offering himself as a candidate for the National Assembly, and was only deterred by the fact that such a step would have involved the loss of his British citizenship. When in his eightieth year (1857), he was instrumental in founding the Social Science Association, and he delivered the inaugural address with all his old force and comprehensiveness. Death at length came quietly to the old man on May 7, 1868, at Cannes, where he had a château, and which, owing to his patronage, extending over many years, had risen from a humble fishing village to a health resort of international celebrity. It is as an orator and law-reformer that Lord Brougham will chiefly be remembered by posterity. In the art of ornate and vigorous public address he is regarded as second only to Canning, whose eloquence is said to have almost constrained men to kneel in admiration at his feet. Brougham's defects—

vanity, arrogance, and not a few eccentricities of an unpleasant nature—caused much of his real personal worth and solid labours in the cause of humanity to be forgotten, and were probably the reason why no Cabinet, after that of the Reform epoch, cared to summon to its deliberations one who could discourse learnedly and cogently on any given topic, and also foment mutual jealousies and bickerings—all in the brief space of half-an-hour!

The Right to Opinion.

Gentlemen,—Before I go any further I will ask you to consider how far we have already got in the case you are trying. It is admitted, indeed it cannot be denied, that an Englishman has a right, which no power on earth can take away from him, to form an opinion. I do not say on the measures and character of our rulers; that right he certainly has, but it is not involved in the present question, for this author has done no such thing; it cannot, I say, be denied that an Englishman has the privilege of forming his own opinion upon the policy, expediency and justice of the system that is adopted by his rulers. Having formed this opinion, it cannot be denied that he has a right to promulgate it; and surely it can no more be denied than the two first propositions can be disputed, that he has a right to support his own opinion by his own arguments, and to recommend its adoption in what he may deem the most efficacious manner. And, gentlemen, let me ask you further, if you will withhold from him the privilege of appealing to such topics as suggest themselves to his mind for the enforcement of his opinion, and even for the ornament of his discourse. Are you to tie him down to any particular set of subjects? Will you say to him: "Have your opinion, but take care how you make it known to the world"? Will you say to him: "Support your arguments, but in so doing, you must choose those we shall point out to you; you must steer clear of everything we do not approve of; you must take care to state nothing forcibly, to argue dully, to support your argument feebly, to illustrate it stupidly"? Is this free discussion? Is this the way in which you would have that which is done in this country compared with that which is done in France? If we have any privilege more important than another,

gentlemen, it is that we may discuss freely. And is it by this straitened—this confined—this emasculated mode of discussing subjects that every one of us must be regulated? who, when he looks first at home and then to France, is so thankful for being born in this country!

[From his defence of John Drakard for libel, March 13, 1811.]

"Mens Conscia Recti."

May it please your Lordships: the time is now come when I feel that I shall truly stand in need of all your indulgence. It is not merely the august presence of this assembly which embarrasses me, for I have oftentimes had experience of its condescension; nor the novelty of this proceeding that perplexes me, for the mind gradually gets reconciled to the strangest things; nor the magnitude of this cause that oppresses me, for I am borne up and cheered by the conviction of its justice, which I share with all mankind. But, my Lords, it is the very force of that conviction, the knowledge that it operates universally, the feeling that it operates rightly, which now dismays me with the apprehension that my unworthy way of handling it may for the first time injure it: and while others have trembled for a guilty client, or been anxious in a doubtful case, or crippled with a consciousness of some hidden weakness, or chilled by the influence or dismayed by the hostility of public opinion, I, knowing that here there is no guiltiness to conceal, nor anything save the resources of perjury to dread, am haunted with the apprehension that my feeble discharge of this duty may for the first time cast that cause into doubt, and may turn against me for condemnation those millions of your Lordships' countrymen whose jealous eyes are now watching us, and who will not fail to impute it to me if your Lordships should reverse the judgment which the case for the charge has extorted from them. And I feel, my Lords, under such a weight so troubled, that I can hardly at this moment—with all the reflection which the indulgence of your Lordships has accorded me—compose my spirits to the discharge of my professional duty, under the pressure of the grave responsibility which accompanies it. It is no light addition to this feeling that I foresee, though happily at

some distance, that before these proceedings close it may be my unexampled lot to discharge a duty in which the loyalty of a good subject may, among the ignorant, among the thoughtless—certainly not for a moment with your Lordships—suffer an impeachment.

[Opening of the Queen's Case, October 3, 1820.]

SIR WILLIAM SHEE (1804—1868).

THIS distinguished advocate, celebrated for his legal attainments and as the first Catholic barrister to be raised to the Bench of the superior Courts of this country since the reign of James II., was born at Finchley, being the son of Thomas Shee, Esquire, of Kilkenny. In 1817 he went to Ushaw College, near Durham, where both he and his brother Joseph were regarded as "diligent and talented students." After a further course of study at Edinburgh University, William Shee entered at Lincoln's Inn, and was "called" in 1828. His first public appearance as a speaker was at the great meeting of the "Men of Kent" at Penenden Heath, convoked to oppose Catholic Emancipation. Shee, who was accompanied by the great Irish orator Richard Lalor Sheil, addressed the multitude in "a bold and manly speech," laying before the audience a clear and convincing statement of the wrongs suffered by the Catholic body, and the groundlessness of Protestant fears. Though the petition against Emancipation was carried, it was so only by a very reduced majority, for Shee's speech undoubtedly convinced many of his hearers of the justice of the cause he so ably advocated. As a barrister Shee soon became known for the thoroughness and earnestness of his pleading and for his sound knowledge, especially of commercial law. His treatise on the Merchant Shipping Act (1854) is a classic, and it served greatly to extend his already large practice. His name as an advocate lives, however, chiefly owing to his defence of William Palmer, the Rugeley poisoner. This latter, a young surgeon, was tried at the Old Bailey in May, 1856, for the murder of a betting man named John Parsons Cook at Rugeley by strychnine poisoning. The case excited enormous interest, not only in Great Britain but throughout Europe, both by reason of the then obscure nature of the drug used and the mystery surrounding the whole affair. So great was the excitement in Staffordshire, and so deep the animus against Palmer, that a special Act of Parliament had to be passed to deal with this class of cases and permit them to be

removed for trial to London. As leading counsel for the prisoner, in a trial that Sir James Stephen calls one of the greatest in English history, Shee certainly rose to the occasion. His speech for the prisoner, though unavailing to save his client from a well-deserved fate, was not only a brilliant specimen of legal oratory, but may be said to have laid down the main lines of defence subsequently adopted by barristers when retained on behalf of persons accused of this species of crime. As Member for Kilkenny, Shee paid much attention to Irish affairs. With Mr. Sharman Crawford he laboured to promote the Tenant Right Bill (1852), for ensuring to out-going tenants compensation for the unexhausted improvements effected on their properties. The learned serjeant's able brochure, "A Proposal for Religious Equality in Ireland, and for a Charitable Settlement of the Irish Church Question," caused wide attention, and many of the solutions proposed in the essay were afterwards adopted by Mr. Gladstone when drawing up the Bill for Disestablishing the Irish Church. The "charitable" note of the publication was in perfect keeping with Shee's kindly and generous nature, which made him a great favourite with all ranks of the Bar, and especially the younger members, who always found in "the dear old serjeant" a sympathetic and helpful friend.

In 1857 Shee, who had received the coif in 1840, became one of the last Queen's Serjeants-at-law—a title which carried with it, among other privileges, the right to sit, but not to vote or speak, in the House of Lords. Seven years later that staunch Churchman, Lord Westbury, nominated Shee as one of the justices of the Court of Common Pleas in succession to Sir William Wightman. The Lord Chancellor, though himself "obsessed with the fear of Rome," deserves great credit for an act which was not performed without a good deal of opposition from Exeter Hall and its supporters. But the overwhelming consensus of professional and public opinion was in favour of this tardy acknowledgment of Shee's pre-eminent worth. "The Times" in a leading article eulogised the promotion, while Sir John Tenniel's cartoon, representing Lord Chancellor "Punch," handing the learned serjeant a large slice of the "National Pudding of Preferment," marked "Judgeship," humorously but correctly expressed the popular approval of the event. Sir William Shee

made an admirable judge, though he occupied the Bench too short a time perhaps to make any lasting impression as a practical jurist. He died at his house in Sussex Place, Hyde Park, February 19, 1868, leaving by his wife Mary, daughter of Sir James Gordon, Baronet, of Letterfourie, two sons—Henry Gordon (1849—1907), a distinguished King's Counsel and Recorder of Burnley, and George Darell (1843—1894), Recorder of Hythe, known in the annals of journalism as one of the founders of the late "Echo," the first halfpenny evening paper to be published in London.

A Counsel's Responsibility.

May it please your Lordships, gentlemen of the jury,—I should pity the man who could rise to perform the task which it is now my duty to attempt, unoppressed by an overwhelming sense of diffidence and of apprehension. Once only before has it fallen to my lot to defend a fellow-creature upon a trial for his life. It is a position, even if the effort should last but for a day, of a nature to disturb the coolest temperament and try the strongest nerves. How much more so when during six long days, in the eyes of my unhappy client, I have been standing between him and the scaffold; conscious that the least error of judgment on my part might consign him to a murderer's doom, and that through the whole time I have had to breast a storm of public prejudice such as has never before imperilled the calm administration of justice! Gentlemen, it is useless for me to conceal what you know perfectly well, what your utmost endeavours cannot wholly have effaced from your recollection, that for six months, under the sanction and under the authority of science, an opinion has universally prevailed that the voice of the blood of John Parsons Cook was crying up unto us from the ground, and that the cry was met by the whole population, under an impression and conviction of the prisoner's guilt, in a delirium of horror and indignation by another cry of "blood for blood!"—. . . Gentlemen, one great misfortune has befallen the accused—a most able man* who had been selected by him as counsel

* Mr. Serjeant Wilkins.

many weeks ago, has been unfortunately by illness prevented from discharging that duty to him. I have endeavoured to the utmost of my ability to supply his place. I cannot deny that I am awed, that I am moved by the task I have undertaken. But the circumstances to which I have already adverted, the national effort, so to speak, through the Government of the country, to ensure a fair trial, is a great cause of encouragement, and I am not dismayed.

[Speech for Dr. Palmer, Old Bailey, May, 1856.]

Our very Selves a Mystery.

I have said "a little learning is a dangerous thing," and it appears to me that there never was a case in which the adage was so applicable as it is in this. Of all the works of God the one best calculated to fill us with wonder and admiration, and convince us of our dependence on our Maker and the utter nothingness of ourselves, is the mortal coil in which we live and breathe and think and have our being. Every minute of our lives functions are being performed at our will, the unerring accuracy of which nothing but Omniscience and Omnipotence could have secured. We feel and see exactly what takes place, and yet the moment we attempt to explain what takes place, the instant we endeavour to give a reason for what we know and see and do, the mystery of creation—"God created man to His own image, to the image of God created He him"—arrests our course and we are flung back upon conjecture and doubt! We know in a sense—we suppose—that the soft medullary substance which is within the cavity of the head is the seat of thought, of sensation, and of will. We know that that soft medullary substance is continued down the middle of the back, protected by a bony duct or canal within which bony duct or canal it lies embedded, and we know that from the sides of this bony duct and from this medullary substance proceed an infinite variety of nerves, the conduits of sensation from all parts of the body to the soul, and of muscles connected and dependent on them, the instruments of voluntary motion. This we know, and we know that by that process all the ordinary actions of our lives, at our own will, are effected with the most wonderful precision. Sometimes, how-

ever, these nerves and muscles depart from their normal character, and instead of being the mere instuments of the will of the soul, become irregular, convulsive, tumultuary, vindicating to themselves a sort of independent vitality totally regardless of the authority to which they are ordinarily subject.

[*Ibid.*]

Danger of Scientific Speculation in Criminal Trials.

Gentlemen,—Let me ask you in what position we are placed for the safety of our lives and families, if, upon such evidence as this, upon suspicion so excited and so sanctioned by hasty opinions of medical men, we are liable every time a sudden death takes place in a family to be put upon our trials on suspicion of foul play to those with whom we live? In the cases which are usually discussed in this Court, witnesses are called to give evidence respecting processes and means of arriving at truth, with a knowledge of the facts in question, with the operation of which processes the prosecuting counsel, the judges and the jurors are as well acquainted as the witnesses themselves. The witnesses come to speak to facts, a great portion of which are within the ordinary knowledge and appreciation of mankind; but if science is admitted to dogmatise in our Courts—science not exact in its nature; science, not successful, but baffled even by its own tests; science bearing upon its forehead the motto that a little learning is a dangerous thing—if that is to be introduced to State processes of arriving at truth, conclusive to its satisfaction, but which we cannot follow, and opinions respecting the cause of death which those processes have not discovered, judges and jurors will have an amount of responsibility thrown upon them too great for human nature to bear.

[*Ibid.*]

LORD WESTBURY.

RICHARD BETHELL, LORD WESTBURY (1800—1873).

THE cynical gentleman who described a "brilliant man" as "a person incapable of earning his own living" must have entirely left Lord Westbury out of his reckoning. For there was scarcely a period in his life when the great mid-Victorian Lord Chancellor did not literally scintillate with brilliancy—and a brilliancy which was ever the accompaniment of the utmost material prosperity. The son of a physician of Bradford-on-Avon, and claiming descent from the Welsh stock of Ap-Ithell, Richard Bethell went to Wadham College, Oxford, the year before Waterloo, and, after gaining distinction in both classics and mathematics, became a boy-bachelor at the age of eighteen! Having chosen the Bar for his profession, Bethell was retained by his college as its counsel in a Chancery suit against a great nobleman, whose claims, if successful, would have had a very serious effect on Wadham's fortunes. Bethell gained the day for Alma Mater, and from that time onward his practice increased by leaps and bounds till, in 1840, his professional income was estimated at £20,000 a year! As Member of Parliament for Anglesey, and later on for Wolverhampton, he advocated many of those legal reforms, such as the Fraudulent Trustees Bill and the Bankruptcy and Insolvency Bill, which were, it seems, but part of that general system of codification which he had in view. After having filled the offices of Solicitor- and Attorney-General, Bethell in 1861 succeeded Lord Campbell as Lord Chancellor, with the title of Baron Westbury. He was not, however, destined to hold the Seals long. The appointment, in the course of 1865, of a near relative, who was only nominally a barrister, to the Registrarship of the Leeds Court of Bankruptcy, and the grant of a pension to a person not greatly deserving of it, led to one of those outbursts of virtuous indignation to which the people of this country appear to be so liable—followed by an acrimonious debate in the House of Commons. In spite of the efforts of the Ministry, a vote of censure on the conduct of the Chancellor was carried, and Lord

Westbury resigned. Throughout his legal career Bethell had been noted for his mordant wit, and the almost innumerable victims of his polished and penetrating sarcasm were now only too glad of the opportunity of revenge afforded by their critic's thoughtless indiscretion. Contrary to the expectation of almost everyone, however, the fallen Chancellor indulged in no parting recriminations, but took leave of his high office in a speech of surpassing dignity, and even sweetness, which disarmed opposition and changed bitterness into positive regret. When motives had been explained, and the wave of party censure had passed away, there was some suggestion of making the ex-Chancellor Lord Chief Justice of England. But Lord Westbury preferred to remain in a state of semi-retirement, rendering to the judicature those effective services as law-lord which had made his brief tenure of the Seals so remarkable, and in promoting those salutary legal reforms he ever had so much at heart. Among these may be mentioned the proposal to elevate the Inns of Court into a law university, with power to confer degrees in law, a scheme which was only frustrated by the opposition of the Benchers of Lincoln's and Gray's Inns. He did, however, succeed in getting an entrance-examination instituted for non-university students, thus ensuring—as he himself would have expressed it—that no one could become a member of an Inn of Court without first proving that he had a little Latin, a little literature, and a little English history!

Our Statutes a Patchwork.

Unfortunately our legislation has always been extemporary. We wait till a grievance is intolerable and then we apply ourselves to a remedy which does not go beyond the grievance. Our legislation has always been on the spur of the moment; nay, more, it unfortunately happens that the manner in which the legislation is conducted contributes more than anything else to the evils that lie so palpably on the Statute-book. . . . When you address yourself to a new statute, after having considered the general principles of the proposed measure, the Bill is subjected to the process of Committee, and then it constantly happens that things are grafted upon a statute under misconception, at variance

altogether from the original conception of the framer. Your new Acts are patches on old garments. You provide for the emergency, but you pay not the least regard to the question whether the piece you put into the old garment suits it or not! Such being the mode of your legislation, it would be utterly impossible that your Statute-book should be other than it is—a mass of enactments which are in a great degree discordant and irreconcilable!

British Law not Scientific.

The first thing that strikes every member of our profession who directs his mind beyond the daily practical necessity of the cases which come before him is that we have no machinery for noting, arranging, generalising and deducing conclusions from the observations which every scientific mind could naturally make on the way in which the law is worked in the country. Now look how differently the moral sciences and every part of physical sciences are treated here. Is not science among us pursuing the great Baconian method of induction? Are we not always making experiments, recording the results of our observations, and at length, when a great quantity of facts are ascertained, we advance with certainty the boundaries of each science? Why is not that applied to law? Take any particular department of the common law—take, if you please, any particular statute. Why is there not a body of men in this country whose duty it is to collect a body of judicial statistics, or, in more common phrases, make the necessary experiments to see how far the law is fitted to the exigencies of society, the necessities of the times, the growth of wealth and the progress of mankind? There is not even a body of men concerned to mark whether the law is free from ambiguity or not; whether its administration is open to any objections; whether there be a defect either in the body or conception of the law, or in the machinery for carrying it into execution. The consequence is that, in the moral science of the law, we never make an advance, because we never generalise and have not persons who (as moral, political or scientific men do in their peculiar line) interest and concern themselves in observing the effect of the law; whether the instrument we have destined for a certain duty is calculated to perform it well.

JAMES WHITESIDE (1804—1876).

JUST as it was remarked of the great henchman of O'Connell, that the rhetoric which died with George Canning lived again in Richard Lalor Sheil, so it may be said that Whiteside carried down into the mid-Victorian epoch the brilliant eloquence of the earlier decades of the century. The father of the illustrious orator and Chief Justice of Ireland was a clergyman of Rathmines, who died in 1806, leaving his widow and young children ill-provided for. A mother's courage and loving care made up the deficiency, and in 1822 she had the satisfaction of seeing her son enter Trinity College, Dublin. Eight years later he was called to the Irish Bar, but for a year longer continued reading in the chambers of Mr. Joseph Chitty, whose mission in life, apparently, was to write a small library of admirable law-books and train half the future Bench and Bar for their work. Like Sheil, Whiteside contributed to the magazines of the day some very racy biographical articles entitled "Sketches of Eminent Persons," but his marvellous powers of oratory soon made his name known throughout Ireland as a consummate advocate, and in 1842 he received a silk gown. His defence of O'Connell at the State Trials in 1844 is a masterpiece of forensic address.

But even the strongest will succumb beneath ever-increasing labours, and shortly after the Government prosecutions just mentioned, Whiteside went to Italy for the benefit of his health. For him the change of scene also meant a change of work. Always highly cultured and a student, he has left a well-known memorial of his visit to the classic peninsula in his "Italy in the Nineteenth Century" and "Vicissitudes of the Eternal City." He arrived back in Dublin in time to defend William Smith O'Brien and the other chiefs of the "Young Ireland" party for treason-felony in 1848. His advocacy of the popular leaders, however, did not militate against his own advancement, for, having entered Parliament for Enniskillen, he was appointed Solicitor-General of Ireland by Lord Derby in 1852. Unlike many lawyers, he was

a great success in the House and so popular with all parties that when he entered the Commons after his brilliant defence of the Countess's claim in the famous Yelverton matrimonial case (1861), he was greeted by all the members with loud cheers. After serving the office of Attorney-General in 1866, Whiteside the same year succeeded Thomas Lefroy as Lord Chief Justice of Ireland. He made a most dignified figure on the Bench, but was too much of the advocate to be a really great judge, a characteristic which he shared with his more famous countryman Curran, whose style of eloquence he did so much to perpetuate. Chief Justice Whiteside died at Brighton on November 25, 1876, and was buried at Mount Jerome, Dublin. Whiteside's eloquence is said to have comprised all the finest traits and qualities of Burke, Curran and Plunket, and he must be regarded as the last of the great classic orators of Ireland. His style of advocacy has been described as the burial of law and fact under a torrent of discursive eloquence —a statement which well conveys to the reader an idea of the marvellous forensic powers of this remarkable man, who seems to have combined in himself the leading qualities of legal and literary genius.

To Offend Party is Worse than Treason!

Gentlemen,—I have spoken to this case. I have gone over the entire evidence, and it for you to say whether the charge brought forward against the prisoner is made out. The charge is high treason—that he did compass the death of the Queen, and levy war against her in her realm. I have explained the principles on which the case rests. I have showed you that appearance in arms is not enough to constitute treason, a seeking of protection from arrest is not enough; the crime proved must be treason within the indictment, or else you are bound to acquit the prisoner.

I have observed upon the evidence and considered, as far as my humble ability would permit, the great question involved in this solemn trial—namely, the guilty intent of the prisoner. . . . Well do I know and feel the weighty difficulties of his case. With some, prejudices have blocked up the understanding; with others, calumny has done its work. The impracticable politician has

been condemned to a fate he has provoked and deserved. Driven to excesses he did not contemplate, in order to preserve his personal liberty, he must pay the forfeit of his life. Had he been a hypocrite who assumed patriotism as the mask of selfishness, he would, ere now, have received the rich reward of political baseness. Had he been willing to sell his principles, he would have been promptly paid his price. He had only to cheer on inconsistency when most flagrant, to applaud what he had condemned, and to condemn what he had applauded—to unsay what he had said, and to say what he did not honestly believe, and the attainted traitor would have been a patriotic placeman! He might have flourished in individual prosperity after he had traded with sufficient tact on the miseries of his country. But he is now hooted by all parties, for he has flattered, and he has stooped to, none. This offence against party is worse than his intent to kill the Queen, for he has unmasked faction and exposed meanness and corruption.

[From the speech for the defence, Trial of the Hon. William Smith O'Brien, Clonmel, October 5, 1848.]

A Jury a Rampart of Defence.

Whither can he turn for sympathy? From whom expect justice? Slandered, blackened and vilified, his motives maligned, his conduct misrepresented; nicknamed traitor, anarchist, the foe of social order, property and law—whither can he look for refuge? A price was set upon his head; he has been caricatured, hunted through his native country—no epithet of abuse was too gross to be applied to him. Where can he expect a temperate consideration of his motives and entire political career? His hope must alone be where the law has placed it—in the honour, the integrity, the discernment, the humanity of a jury. A rampart of defence that jury was designed to be to accused men, prosecuted for political conduct or political excesses by the weight and power of the Crown. Judges must be unbending: juries may regard the frailty of human nature. Juries, sprung from the people, should cast the ample shield of their protection around their fellow-subject where they can believe his heart, his motive and his purpose were not guilty, equivocal though certain of his

acts may be. Such is the high office designed for you in that famous Constitution whose foundations have been laid in the deepest wisdom, which has been through successive ages cemented by the patriot's blood and consecrated in the martyr's fire!

[*Ibid.*]

A Patriot's Ideals.

Review his life. From his mother's breast he drank in a love of country—from a father's patriotic example the passion grew to a dangerous height. He has indulged, perhaps, a vision to the peril of life, that Ireland might be a nation, and you, her guides, to wealth and greatness. Is not death upon the scaffold a terrible punishment for the belief, although misguided, that Irishmen had intellect enough to rule the country of their birth? In his childhood he had heard that the Union with England was carried by corruption. He heard it from an Irish senator whom money could not purchase; whom a title could not bribe; who gave his honest vote, and would have freely given his life to save the perishing constitution of his country. That father recounted to my client what Plunket, Bushe and Grattan spoke on the last memorable night of our national existence. How he had been persuaded by the gravity of their arguments, transported by their eloquence, and borne away by their patriotic ardour. His youthful imagination, fired by a sense of Ireland's wrongs, dwelt on the days when we had a gentry and a senate, with intense constancy, and a passion grew that he might restore a Parliament to the land he loved. This was the source of all his errors. Bitter disappointment has crushed his ardent hopes, but a parliamentary constitution he wished and meant to have given to Ireland. No man's property would he have touched—no law of God or man would he have broken. Loved by those who knew him, generous, disinterested, utterly unselfish through life, humane and tender-hearted—he now stands at the Bar of his country to answer for having meant to kill the Queen and subvert the Constitution which in heart he adores. His true offence is that he courted for you what is England's glory and blessing and pride.

[*Ibid.*]

The Accused does not always Fall Alone!

Would to God, Mr. Smith O'Brien were my only client! The future happiness of an honourable, ancient, loyal family is here at stake: the Church, the Bar, the Senate furnish relatives near and dear to this unhappy gentleman, who, although they differ from him in political opinions, have hastened to give to him brotherly consolation this melancholy day. Ireland has been the scene of their benevolent exertions—the source of their joys, their pride. Her misery has been their affliction; her gleams of prosperity their delight. With broken hearts, should you consign the prisoner to the scaffold, they must henceforward struggle on through a cheerless existence, labouring in sorrow for the land they love. A venerable lady, who has dwelt amidst an affectionate tenantry, spending her income where it was raised, diffusing her charities and her blessings around, awaits now with trembling heart your verdict. If a verdict consigning her beloved son to death—that heart will quickly beat no more. Alas! more dreadful still, six innocent children will hear from your lips whether they are to be stripped of an inheritance which has descended in this family for ages, whether they are to be driven fatherless and beggared upon the world by the rigour of a barbarous and cruel law; whether they are to be restored to peace and joy, or plunged into the uttermost depths of black despair. There is another who clings to hope—hope may it be blessed in you! Her life's blood would be gladly shed to save the object of her youthful affections: you will not consign her to an untimely grave! In a case of doubt, at the very worst, let a father's pity be awakened, a husband's love be moved. . . . The awful issues of life and death are in your hands—do justice in mercy. The last faint murmer on *your* quivering lips will be for mercy ere the immortal spirit shall wing its flight to, I trust, a better and a brighter world.

[*Ibid.*]

JOHN HUMFFREYS PARRY (1816—1880).

MR. SERJEANT PARRY belonged to the race of silver-tongued advocates, though he was not destined originally for the Bar. His father, John Humffreys Parry, the distinguished Welsh antiquary (author of the "Cambrian Plutarch," &c.), sent him as a boy to the Philological School, Marylebone, with the view of fitting him for a commercial career, but a short experience of the desk's dull wood convinced the future "leader" that the mysteries and emoluments of buying and selling were not his vocation. A clerkship in the Printed Book Department of the British Museum proved more congenial, and meantime the subject of this notice still further increased his knowledge by attending regularly the lectures of the Aldersgate Institution, one of the many popular seats of learning which came into existence about this time through the exertions of Dr. Birkbeck. Deciding to qualify for the Bar, Parry was duly "called" at the Middle Temple in June, 1843. His pleasing appearance, sonorous voice and the tact of a born advocate soon brought him a large practice at the Old Bailey, the Middlesex Sessions and on the Home Circuit, of which latter he soon became one of the acknowledged leaders. In June, 1856, he received the serjeant's coif, but his attempts to enter Parliament as an advanced Liberal were all unsuccessful. The great cases in which he figured, either for the Crown or the prisoner, range from the trial of Mr. and Mrs. Manning for the murder of the exciseman O'Connor (1849) to the prosecution of the Tichborne claimant for perjury, Old Bailey (April 23, 1873—February 28, 1874). His speech for Franz Müller, the murderer of Mr. Briggs on the underground railway (1864), is a memorable piece of advocacy, and some portions of it which are given here may enable the reader to judge of the remarkable forensic ability of Parry. He also greatly excelled in cross-examination, his acumen in that direction being usually concealed beneath an extreme suavity of manner which proved a veritable pitfall to many a dishonest witness. The eminent talents of this great pleader have largely descended to his

son, Edward Abbot Parry, judge of the Manchester County Court, but more generally known as a writer of witty and well-turned fiction.

The Influence of the Press on Opinion.

My learned friend, the Solicitor-General, has already invited you —and probably his Lordship in summing up the case will repeat the invitation—to discard from your minds all that you may have heard or read or discussed about this case. That gentleman, will be a difficult task for you to accomplish, for in every newspaper in the kingdom this case has, I believe, been discussed *pro* and *con.* Articles have been written in the public Press proving that this young man was guilty of this murder; while articles have also been written in the public Press to prove that he could not have been guilty! It is not for me to criticise the actions of the public Press. Writers in the public Press have their law of action as we have at the Bar. But I must say that it is for the most part unusual when a person has been arrested on a charge on which, if found guilty, his life must be sacrificed, to find writers, not in insignificant journals but in the most respectable and the most eminent part of the Press, commenting on the likelihood of the guilt or the innocence of such a person. This has, however, been done in the present instance, and what has been written has been read probably by every one of you, gentlemen; certainly by almost every person capable of reading a newspaper throughout the country. What has been done, however, cannot be undone, and an impression more or less strong—it is in vain to think otherwise —must have been made upon your minds, not merely by the action of the Press, but likewise by those social discussions which must have taken place on the subject of the prisoner's guilt, sometimes diverging into violent argument on the one side or the other. Yet so confident am I that you will do your duty in this matter and give the prisoner a fair and impartial trial, that I do not believe that when you retire to consider your verdict you will think of anything but the evidence which was laid before you while you were in the jury-box.

[From the speech for the defence of Müller, Old Bailey, October, 1864.]

A Counsel's Personal Opinion in Criminal Trials Not to be Regarded.

I know that there have been men in my profession far more eminent than I am ever likely to be who have damaged themselves, damaged their clients, and damaged the profession to which they belonged by solemn asseverations of the innocence of the person whom they were defending. I shall indulge in no such asseveration. Suppose I were to solemnly assure you now that I believe that young man to be innocent, you would treat the observation as it deserved to be treated—with perfect indifference. Supposing my learned friend the Solicitor-General—and he will, I am sure, forgive me for making the supposition—were solemnly to declare to you that he believed this young man to be guilty, you would treat that solemn declaration just in the same way as you would treat my asseveration of his innocence. The true test, gentlemen, of a man's guilt or innocence is the evidence submitted to the jury at the time of his trial, and I hold it to be impertinent on the part of an advocate—I hold it to be a transgression of professional duty—that he should pledge his own word and solemn belief with respect to that of which he can know nothing save from the evidence and instructions laid before him.

[*Ibid.*]

Circumstantial Evidence must be Complete.

What should be the rule and canon of your conduct in finally arriving at your verdict? It should be that the charge of murder made against this young man should be brought home to him by the clearest and most unmistakable evidence; that you should be as morally satisfied of his guilt as though you, with your physical eyes, had seen him do the deed. The evidence ought to be complete. There ought to be no omission, no discrepancy, no doubt as to its bearing on the case. The Solicitor-General has said, as regards circumstantial evidence, that if it were not the rule of our Courts that juries should act upon it, crime might be committed with impunity. In that observation, I entirely concur. I believe myself that circumstantial evidence, if not the highest is almost the highest order of evidence; but it is only so when no

link is wanting in the chain. If there be any doubt in any part of the evidence laid before a jury, or if evidence subsequently adduced should cast doubt upon it, then the chain of evidence is not complete, and the jury will not act upon it.

[*Ibid.*]

EDWARD VAUGHAN KENEALY (1819—1880).

LIKE his friend, "bright, broken Maginn," Kenealy was a Corkman, and a brilliant graduate (LL.D.) of Trinity College, Dublin. While keeping his terms for the English Bar at Gray's Inn, he met such social and literary lions as Thackeray, "Father Prout" (Francis Mahony), and Serjeants Talfourd and Murphy, and he appears to have impressed them all with his undoubted powers of mind. He failed to enter Parliament as a "Repealer," and after 1849 lived almost entirely in London. He rapidly rose to front rank at the Bar, as a skilful and intrepid advocate, and in 1868 obtained a silk gown. Among his more famous cases must be numbered his defence of the Fenians Burke and Casey (1867), and the affair of Overend and Gurney, in which he led for the prosecution. Much of the time not devoted to his profession was given to the higher branches of literature. That he could write ably as well as speak was shown in 1862, when he published a curious work, "Goethe, a new Pantomime," which greatly puzzled the critics. It was ultimately described as pantheistic. "Cahir Conri" (1860), and other poems, show that he possessed very considerable poetic talent. When the many-sided advocate was retained in succession to Serjeant Sleigh, 1873, as leading counsel for Arthur Orton, the Tichborne claimant, it is said that he had at first serious doubts as to his notorious client's integrity, but close contact with the great legal mystery gradually converted the hard-headed lawyer into the furious partisan of the alleged "Sir Roger." * A barrister who ceases to be merely the

* The Tichborne family, a very ancient Catholic one, has been seated at Alresford, Hants, from before the Conquest. A baronetcy was conferred on the then head of the house in 1626. After the death of the eleventh baronet, Sir Alfred Tichborne, in 1866, Thomas Castro, *alias* Arthur Orton, a butcher from Wagga Wagga, Australia, came forward and claimed to be the late baronet's elder brother, Roger Charles. This latter had been educated at Stonyhurst College, and also served for a few years as lieutenant in the Carabiniers. He was lost at sea off the coast of South America, 1854. After a trial of 103 days, the claimant was nonsuited by the Court of Common Pleas, and committed to take his trial for perjury, March 6, 1872. The trial of the

advocate of his client's cause puts himself into a very false position through departing from that sound policy of impersonal advocacy which is the tradition and glory of the England Bar. That Dr. Kenealy's conduct at the trial was most unfortunate and unprofessional, is to say the least. He made uncalled-for strictures on many witnesses of great position and undoubted rectitude, and flouted, and even insulted, the Bench. In its verdict of guilty against the claimant at the Old Bailey, the jury added a rider of censure on the demeanour of his leading counsel, and in the course of the same year (1874) Dr. Kenealy was disbarred. Ill-health, joined to excessive strain and intense belief in the justice of the cause for which he fought so long and so disinterestedly, must be alleged as excuses for the offences which were now so severely punished. Though wrecked, in a sense, the career of the great ex-counsel was by no means ruined. He edited a vigorous, if occasionally violent, newspaper, "The Englishman," entered Parliament as Member for Stoke, and became the honoured of the masses. He died at Brighton, April 16, 1880, leaving, with other issue, Miss Arabella Kenealy, L.R.C.P., the distinguished writer, whose memoir of her talented father is a noteworthy biography, which, apart from the light it throws on various legal and social phases of society half-a-century ago, has done much to explain the mentality, motives and course of action of a very original and forceful personality.

The Downfall of a Great Commercial House.

The first six counts of the indictment contain charges of conspiracy to induce persons to become shareholders in a certain company by publishing and circulating a false prospectus. There are other counts for conspiracy to obtain money and, generally, for conspiracy. I have satisfied myself since Friday last, when the brief was first put into my hands late in the afternoon, that

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perjury charge at the Old Bailey, in which Dr. Kenealy led for the defence, lasted 188 days, ending on February 28, 1874, when the claimant was convicted on both counts and sentenced to fourteen years' penal servitude. He was released from prison in 1884, and died, April 1, 1898. In 1895 he published a confession in "The People" that he was not Sir Roger Tichborne but Arthur Orton. The trial, the longest on record in this country, cost the Tichborne family nearly £92,000.

this is one of the most serious cases which have come before the public for a great number of years. In fact, gentlemen, the only parallel to it which I can remember is that of the South Sea scheme, which was the disgrace and wonder of the last century. That, however, differs from the present scheme in some material particulars, for it originated in the enthusiastic and sanguine dreams of a number of honest-minded speculators. George I. consented to become the chairman of that company, and everything was at first conducted on the most honest principles; but it ultimately got into the hands of persons such as are always lying in wait for speculations of that description, and from being a *bona fide* scheme, it became a most fraudulent one. The present one is not equal to the South Sea scheme in magnitude, but the defendants are charged with having conspired to defraud the public of at least £3,000,000; while, instead of having entered with enthusiasm into a new scheme—their house had been of long standing and of great experience in commercial matters—they apparently entered into the matter not only with zeal which destroyed the former undertaking, but with a cool and cold-blooded determination to defraud and swindle the unfortunate persons whom they had induced to become shareholders.

* * * * * *

The old firm of Overend and Gurney & Co., which was established towards the close of the last century, enjoyed a world-wide reputation. It was conducted with great prudence, and eventually became one of the largest establishments in the world. In fact, during one year, the profits amounted to something like £125,000. When, however, the present defendants entered upon the management an entirely different policy was, apparently, adopted; whether stimulated by zeal or enthusiasm, or whether actuated by that insane cupidity which unhappily is too largely characteristic of the present day, instead of adhering to the plain, honest and rational system which had been adopted by the old members of the firm, they plunged into the most extravagant speculation, and it will be conclusively proved that, during the five or six years previous to the attempt to involve others in the same ruin as themselves, they had been losing at the rate of £500,000 a year.

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This, gentlemen, is a great and splendid opportunity for you to vindicate the great cause of public justice. I hope that you will not be swayed by any feelings of false sympathy. Roman history affords us examples of men sacrificing their dearest feelings for the good of their country, and I hope that by your verdict you will renounce all false sympathy, and will give a great and splendid support to the maintenance of the commercial honour of the country, so that no stigma may be supposed to rest upon it. And if, by the evidence I shall bring forward, I shall satisfy you that the whole of these persons have been guilty of fraud, and that they have conspired to deceive and delude others, then I trust you will not secure them from punishment, but will let them bear the enormity of their offence.

[From his speech for the prosecution, Trial of Messrs. Overend and Gurney, Court of Queen's Bench, Guildhall, December, 1869.]

The Eternal Responsibility of Courts and Men.

I commence my observations in defence of the accused by reverently invoking the Supreme Judge of the Universe that, in this mighty trial, He may give us that light which is His own essential attribute; that He may guide us by wisdom, by impartiality, by the spirit of justice—justice, the most celestial of all human qualities—unto a true verdict on the issue between us; that we may not be misled by any temporal consideration, by fear, by favour, by affection, to deviate in the least degree from the glorious path of sun-bright rectitude, but that we may, all of us, bear in mind, according to the justice which we mete out here, so shall be the justice administered to ourselves in the dread hereafter. There is not one of us that will not have to stand before that awful Throne, which shimmers far away in the future, to answer for the life on earth; there is not one of us who will not have to give a reason for the motives by which he was influenced in all the essential acts of his existence. So also, for our part, in this great drama which is now being acted before an astonished world, woe be unto him who shall not have well and worthily performed his duty! It were better for him that a millstone were hanged about his neck and that he were drowned

in the depths of the sea! Not impelled by base interest, not deviating from right at the bidding of might, not misled by vanity or flattery, or bribes or careless haste or unrighteous purposes, but stedfastly resolving to be just, and just alone, beyond all other considerations. And when the Eternal, who is the source of all justice, questions each and all of us for our dealings with this man, may we be then prepared to give an answer to that terrible demand which shall satisfy our own consciences, and may we hope to satisfy our Judge also that we have done well.

[Address to the jury on behalf of "the Claimant," Old Bailey, 1874.]

A Counsel may sometimes Justly Abandon a Cause.

I felt that no member of the Bar, no man of honour, is entitled to refuse his services to accused persons who have sought those services. If he do so, he prejudges them, and if he stand aloof, because he feels that he himself may become the object of misrepresentation, he sacrifices his independence in a way which I think no gentleman would like to emulate. In these circumstances I attended on behalf of these persons, and gave to the case my solicitude and attention. Nor would I have held myself released until a jury had pronounced a verdict of guilt or innocence. But the dreadful proceedings of yesterday have, to my mind, so changed the aspect of the case that I can no longer act in it. When a counsel is called upon by the friends and advisers of prisoners, it is supposed that henceforward the law alone must ultimately decide the issue. The appeal is no longer to brute force, and it is understood that all resort to it is definitely abandoned. Upon this understanding, and this alone, counsel, who are merely ministers acting in the interests of justice, hold their retainers, and they cannot even by their presence appear to sanction proceedings of a lawless nature. Yet of what nature were the proceedings which yesterday shocked the metropolis, and which to-day, flashed from east to west, will shock Europe? A crime of the most dreadful kind has been committed—not, indeed, by the prisoners, but by their avowed friends and partisans. Upon the prisoners themselves I make no imputation, and seek to cast no suspicion, but I cannot dis-

guise from myself that their proclaimed friends, in reality their most deadly enemies, have perpetrated on their behalf an unexampled outrage. For aught I know, some of the very persons who retained my solicitor, and through him engaged myself as counsel, may be inplicated in these proceedings. Under these circumstances, therefore, my compact with them is at an end, the understanding with which I went into the case has been abandoned, but abandoned by them. They cannot, in one moment, invoke the imperial, the impartial majesty of the law, and in the next moment seek to annihilate that law by aiming a deadly blow at the very primal elements of civilised society.

[The above was Dr. Kenealy's reason for retiring from the defence of Burke and Casey at Bow Street Police Court, December 14, 1867, on account of the Fenian attempt to blow up the wall of Clerkenwell Prison the day before—an attempt which killed and injured many innocent persons.]

EDWIN JAMES (1812—1882).

THIS ill-starred Queen's Counsel and brilliant rhetorician was a native of Chichester, and after his "call" at the Inner Temple in 1835 he gradually built up a considerable practice in the criminal courts of London and on the Home Circuit. A Radical in politics, he represented Marylebone in Parliament, and also filled the office of Recorder of Brighton. He excelled in forcible address, especially in those cases where passion or prejudice might be relied upon to sway the verdict of a common jury. His most famous defence was that of Dr. Simon Bernard, tried for conspiring to assassinate Napoleon III. he plot, for which Orsini and Pieri suffered death in Paris in March, 1858, was admittedly hatched in England, and, needless to say, the trial of the refugee doctor excited great public interest. Edwin James's speech on behalf of his sinister client was a masterpiece of plausible reasoning and showy rhetoric, and it was rewarded by the acquittal of the conspirator—an event which caused frantic scenes of rejoicing at the Old Bailey and about its purlieus. Three years later the popular advocate was called upon by the Benchers of his Inn to account for some bill transactions which are said to have involved the young Lord Worsley in debts amounting to over £30,000. James's conduct was declared, after investigation, to be dishonourable, and he was disbarred. It is said that at the time of this unfortunate occurrence the Ministry of the day was contemplating the appointment of James as Solicitor-General.

Many a man would have sank beneath such a blow, and it must always stand as highly creditable to the fallen counsel that, so far from desponding, he took almost immediate steps to rehabilitate himself. He crossed the Atlantic and, after some rather serious opposition from the faculty, was admitted to the Bar of New York. But the peculiar talents which had brought him so much into notice in England appear to have failed him in his new sphere, and he never acquired much practice. He had, as a youth, shown some ability for the stage, and in the intervals of his forensic labours occasionally appeared on the boards of the

Winter Garden Theatre in the city of his exile. Yearning for home, however, and not despairing of readmittance to the English Bar, he returned to London in 1872, and, on his appeal for reinstatement being rejected by the judges, he resolved, even at the age of sixty-one, to begin to qualify as a solicitor. He duly articled himself to a Mr. William Henry Roberts, of Moorgate Street, but it does not appear that his attempt to enter the lower branch of the profession was any more successful than his efforts to re-assume the long robe. He died at his residence in Bedford Street, London, on March 4, 1882, still embarrassed by those financial difficulties which had been at the root of his undoing. Much of the oratory of this interesting but unfortunate lawyer is mere sensationalism and glittering phraseology. But it undoubtedly abounds in some flights of genuine eloquence, as in the case of the memorable speech he delivered on behalf of the worthless alien conspirator whose abuse of the hospitality of these shores nearly involved two friendly and neighbouring nations in the horrors of war.

Speech on behalf of Dr. Simon Bernard. Old Bailey, April, 1858. (*Condensed.*)

Gentlemen of the Jury,—You will readily believe that I use the language of truth when I state that I rise to address you almost overwhelmed by the sense of the responsibility cast upon me, of the magnitude of the duty I have undertaken. I am sensible that the question you have to consider is that of murder, and that on me devolves the awful and important task of establishing to your satisfaction the entire innocence of the unfortunate gentleman at the bar, and thereby rescuing him from the ignominious doom which awaits him on the scaffold. Gentlemen, the prosecution is apparently founded on an Act of Parliament passed in the reign of George IV. for the punishment of British subjects who may have committed murders in places without Her Majesty's dominions. Gentlemen, this Special Commission has been summoned and this prosecution established, not on account of any injury of which Her Majesty or any of her subjects has to complain, but it has been directed by foreign dictation to bring about a state of political subserviency to foreign Governments

which the Executive of this country has not the courage to submit to the sanction of the English House of Commons or the English people! It is an attempt, by indirect means, to do that of which the Legislature by their adverse vote had already clearly expressed their disapproval. The legal authorities of the Crown, therefore, have been directed to exert their utmost ingenuity to discover amid the archives of Parliament an Act under which the charge of wilful murder might be established and a political vengeance attained. Why was not the charge of murder at once made? How comes it to pass that, with a perfect knowledge of the nature of the evidence, a charge of conspiracy alone should originally have been brought against the unfortunate gentleman at the bar (and let me say that he is a gentleman by birth, by education and by station). Why but to release them from political difficulty—to gratify a foreign Potentate and to avoid meeting a hostile Legislature? Gentlemen, you are aware of, and indeed a cloud of witnesses has been called before you to prove it, the dark and horrible attempt made on the life of the Emperor Napoleon on the 14th of January last. My friend, the Attorney-General,* has drawn for you a sad, and perhaps not unfaithful, picture of the results of that terrible crime; but he has failed to show that Dr. Bernard was present or even cognisant of or had participated in that most criminal transaction. Gentlemen, I can imagine the feelings of horror which the picture of that scene produced on your minds. I know the detestation with which every Englishman regards the crime of assassination. I am not here to utter one syllable in defence of a crime so dark, so odious, so dastardly. The prisoner is charged with being an accessory to the murder of an officer of police named Nicholas Batti serving on duty at the French Opera on the evening of the 14th of January. And he is said to have been guilty of the murder of Batti because he had conspired with Orsini and others to assassinate the Emperor of the French, and that in making the attempt the death of Batti ensued. But if it be consistent, as I will show you it is, with all the facts of this case that the prisoner had nothing whatever to do with the attack on Napoleon, that he believed that the project in which they were about to be

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* Sir Fitzroy Kelly.

engaged was a scheme for the restoration of liberty in Italy, then the prisoner must be acquitted.

I should have thought that, when, under the dim twilight of that winter morning, the heads of Orsini and Pierri had fallen beneath the axe of the guillotine, offended justice had been amply vindicated and the vengeance of Louis Napoleon satisfied. But I was mistaken; his demand has gone forth, and the Government have, in an ill-advised moment, complied with it. But it is for you, with whom the decision rests, to say whether by your verdict you will give sanction to the object really sought; whether you will destroy that sacred right of asylum which our country has ever held out to the unfortunate of other lands. For centuries our shores have been open and the protection of our strong arm has been extended to those whom the operations of political and religious persecution have driven from their native soil. Here have come at various times, and from various causes, the crowned monarch of yesterday—the representatives of ancient nobilities—the dignitaries of an august and venerable priesthood. And here all have found that rest and protection which the land of their birth refused them. He, at whose instigation this prosecution was undertaken, little knows the firmness, the attachment to the law, the regard for mercy and the unconquerable love of liberty which animates the breasts of the English people. Tell him that no threats of mighty armaments, no insane dread of foreign invasion, will for one instant intimidate you. Tell him that the jury-box is the sanctuary of English liberty. Tell him that on this very spot your predecessors have not quailed before the arbitrary powers of the Crown, backed by the influence of Crown-serving and time-serving Judges! Tell him that you will acquit the prisoner, though the roar of French cannon thundered in your ears! Your verdict will be firmly and courageously given —careless whether that verdict pleases or displeases a French despot or secures or shatters for ever the throne which a tyrant has built upon the ruins of the liberty of a once free and still mighty people!

An Italian's Reflections and Resolutions (1858).

Gentlemen,—We, born in a foreign land, and under a colder clime, even we can scarcely study the history of Italy without a

sigh, or consider her pristine greatness and her present degradation without a tear! But to the educated Italian, who peruses the history of her early splendours, recorded in the brilliant pages of her immortal writers, who remembers that she was once the mistress of the world, that her victorious armies traversed every land and her fleets visited every port; that she was the mother of great warriors, great statesmen and great thinkers; that from her sprang Cicero, whose matchless orations are still the admiration of the world and the models of our eloquence; of Virgil and Horace, whose glowing effusions, rich in lessons of wisdom and patriotism, still delight the learner and provoke their imitation; who recalls her as she was in the Middle Ages, the centre of thought and action, the seat of the revival of the arts and learning, gifted with republics whose municipal institutions England has loved to imitate; who thinks of her as the birthplace of Dante and Petrarch, of Raffaelle and Michael Angelo; who remembers her as setting the example to every other nation for the pursuit of all that was great and noble and good; to such an Italian, who compares what she was with what she is, and who sees her now fallen, degraded and crushed, the reflection must awaken thoughts almost approaching to despair and madness. Nor can we wonder, although we may not approve, that such men, warm with the recollections of the sentiments inspired by the noblest writers, should enter into combinations, whose object might be to restore the lost liberty of their land, or should plan an organisation of warfare which might, in its ultimate effects, shatter the chains by which they were bound, free them from the oppression they hated, and reopen to their country the prospect of future happiness and freedom.—[*Ibid.*]*

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* As stated above, Dr. Bernard was acquitted, chiefly as the result of his counsel's fiery appeal, and the resentment caused in this country by the threats of invasion so recklessly put forward by the military party in France. The eminent journalist, the late Mr. George Sala, who was present at this trial, asserts that Bernard muttered defiantly on quitting the dock: "But I did conspire!" [See Sala's "Things I have Seen and People I Have Known" and his "Life and Adventures."]

WILLIAM BALLANTINE (1812—1887).

AMONG the many published "Memoirs" and "Recollections" which have done so much to preserve for future generations the social, political and professional life of the early and middle Victorian period, few are of more general interest than the "Reminiscences" of the subject of this notice. From their kindly, yet shrewd, pages may be gathered the events and incidents of the great advocate's career commencing with his unhappy schooldays at St. Paul's School and his somewhat desultory law-reading in the chambers of Mr., afterwards Baron, Watson, where he found the "precedents of pleadings" a "disgrace to common sense." He was duly "called" at the Inner Temple in June, 1834. His first appearance in Court—on behalf of a theatre-licence for George Conquest, the famous actor—was marked by a feeling of intense nervousness and a sickening sensation of utter failure. Despite this disadvantage he won his case, and it was not long before Clarkson, Phillips, and the other leaders of the Middlesex Sessions found in the young Templar a formidable rival. Long before Ballantine received the serjeant's coif (1856), his reputation was established in the Courts as one of the greatest criminal advocates of the day. Like Sir Charles Russell (*q.v.*) later, he surpassed in two great forensic qualifications—cross-examination and the grasp of essential facts. His speeches, notwithstanding a certain hesitation, were marked by great charm of manner, and few counsel have had more clients or more varied. These latter ranged from Prince Louis Napoleon (Napoleon III.) to the Gaekwar of Baroda. For defending the last-named Prince on a charge of attempting to poison the British Resident, Colonel Phayre (1875), Ballantine received no less a fee than £10,000. In spite of this and the other large emoluments of his professional career, Ballantine's last years were clouded by pecuniary embarrassments—troubles which even a lecturing tour in the United States failed to relieve. He died at Margate in January, 1887, leaving behind him a reputation for legal acumen which is still more than a memory among his brethren in the law.

The Case of the Gaekwar Unparalleled.

After what, I believe, and I think I shall demonstrate, to have been a most cruel and groundless persecution, His Highness the Gaekwar of Baroda has now the opportunity of coming before a Court constituted as this is, and to ask at their hands that justice which has been denied him. It is now known upon what grounds these accusations have rested. It is now known upon what slight foundation his liberty has been taken away. He has been humiliated in the eyes of his subjects, has suffered the misery of what amounts in reality, upon a man constituted as he is, to a severe incarceration. It is now further known upon what evidence these charges are founded, and in what way that evidence has been procured. . . . I remember no case of modern days bearing the slightest similarity to it—I have not the slightest acquaintance with the proceedings of Courts of justice in this country. And, for aught that I know, infamy may exist elsewhere and cases of infamy may have been discovered before a tribunal like this. But in my time, and in my knowledge of other tribunals with which I am familiar, I have known none of the same character. I have known none bearing even a similarity to it, and I confess it is with wonder and astonishment I find that this unfortunate and unhappy Prince has had his liberty taken away and been followed by slanders of the foulest kind, and has been heaped with infamy of the most extraordinary kind from quarters where he would feel it most.

No Case against the Gaekwar.

No case probably has ever excited more general attention, that will be watched with more jealous care, that will be canvassed by more critical minds. It is probably the very first example that I know of in which a man in the position of the Gaekwar, charged with an offence of this character, or, indeed, with any offence at all, has been put upon his trial. We know well the history of India furnishes many examples of it, how the Viceroy has frequently with a high hand taken upon himself the supposed necessary correction of those who have acted contrary to that which the Viceroy has taken on himself to think is correct. But

on the present occasion His Excellency the Viceroy has felt it right when there is a grave accusation against a great Prince in the Kingdom, that that accusation should be sifted. . . . I implore you to look into the minutes of the evidence. I believe in that minute will be found matters upon which I have not relied, but which have strong bearing to show that the Gaekwar is entirely innocent of the charge. Cast from his throne, exhibited to his people under circumstances of degradation, not one man scarcely dare, while the investigation is going on, to come forward and say a word in his favour—he has solemnly declared his own innocence, and I, as his counsel, have referred to the evidence given here, and solemnly ask the tribunal, which has to try him by equal judgment and justice of English laws, to say that the veriest pickpocket ever charged with an offence could not have been found guilty upon the evidence by which it is sought to deprive a Sovereign Prince of his throne!—[*Ibid.*]

MONTAGU WILLIAMS (1835—1892).

In his fascinating "Leaves of a Life," this genial barrister and kindly magistrate has given in the most racy of styles a graphic account of a career which embraced in its protean folds the diverse professions of schoolmaster, Army officer and stage-player, as preliminaries to the verbal struggles of the Courts. From his schooldays at Eton down to his somewhat premature death Montagu Williams ever displayed an intense interest in human nature and a deep sympathy for the sufferings and vicissitudes of the poor. He had the versatility which would have given him success in any walk of life where a clear head, a ready address and a thorough grasp of facts are among the essential requisites. After leaving Eton, where he formed a lifelong friendship with the late Francis Burnand, the future editor of "Punch," the subject of this notice taught classics at the Ipswich Grammar School, and then, having brought from the Militia one hundred recruits to the line, obtained—in pursuance of a custom in vogue in those days—a commission as Ensign in the Forty-first Foot (March, 1856). The conclusion of the Crimean War, however, cooled his military ardour, and early next year the disillusioned young officer essayed the stage as one of the company of Mr. and Mrs. Robert Keeley. The chief result of this venture was his marriage with their daughter Louise—a happy union, which lasted till the lady's death in 1877. About 1858, Williams, on the advice of his father-in-law, went to the Bar, his legal studies being kindly assisted by the advice of Mr. Serjeant Parry, who drew up for the guidance of the young student a list of books that would have appeared formidable even to a Coke or a Selden! It need scarcely be said that the majority of the learned "authorities" were not even consulted by Williams, who, though a fine classical scholar, with an enthusiasm for Horace, was never, in any sense of the term, a "black-letter lawyer." He had, as already observed, a ready address and a wonderful skill in marshalling facts and circumstances favourable to his client's case. His professional reading lay chiefly in criminal law and

the allied subjects, and his knowledge of these was both wide and exact. After the example of Sheil, and probably for much the same reason, he, about this time, wrote for the stage, and some "playful stallite" now grown old may yet smile as he recalls the mirth and humour of such farces of the famous lawyer as "A Fair Exchange" and "Easy Shaving." From the day of his "call" (April 30, 1862) down to his enforced retirement from the Bar, owing to ill-health, in 1886, Montagu Williams's practice was a constantly increasing one. He seldom appeared on the Nisi Prius side of the Courts, but at such criminal tribunals as the Old Bailey and the London Sessions he stood almost unrivalled. His consummate knowledge of men, great self-possession and infinite tact often saved his client from merited or unmerited conviction, but among his forensic "defeats" must be reckoned his defence of Lefroy, the Brighton murderer (1881), and of Dr. Lamson, the Wimbledon poisoner (1882). An attack of laryngitis at length compelled this able advocate to relinquish his practice in 1885, and though, while hope of recovery remained, Williams bravely struggled against this terrible misfortune, he definitely retired from the Bar in the following year, when he was appointed stipendiary magistrate at Greenwich. Here his salient qualities of tact, kindness and equity made him in every sense of the word an ornament of the Bench and one who inspired all who came in contact with him with the utmost confidence and, not infrequently, attachment. Much of the leisure of his later life was passed at "Elleray," his seaside home at West Cliff, Ramsgate, and there he died on December 23, 1892. A relish for the works of Dickens and a sincere admiration for Cardinal Manning and his social work were also traits in the character of this able advocate and large-hearted lawyer, whose memory is still revered as that of the "poor man's magistrate."

Juridical Mistakes.

Gentlemen,—Juries have made mistakes; judges have made mistakes; and although judges tell juries, and tell them earnestly and sincerely—for the judges of this country are one of its brightest ornaments—although they tell juries, intending that they should

act upon what they say, not to take any expression of opinion from them, because the responsibility rests with the twelve men who have to try the case; yet, gentlemen, in my humble opinion, when you come to consider that our judges in many cases are elevated to the Bench from being the most successful advocates and the highest ornaments of advocacy in their profession, you must feel that it is difficult for a judge or any human being who has been a successful advocate, and who has been one of the brightest orators of the age, entirely to divest himself of oratory. The lion cannot change his skin; the leopard cannot change his spots; and however unwilling a judge may be that any sentence or word of his might affect the opinion of the jury, the tones that have so long charmed never lose their charm, however much it may be desired—"the right hand never forgets its cunning." I make these observations with all sincerity, and with all respect, knowing that they will be taken in the sense in which they are meant.

From his address to the jury, Trial of Dr. Lamson, Old Bailey, March 11, 1882.] *

Wifely Fidelity.

Gentlemen,—I now come to what is to me the most painful part of my duty. I have told you that you have the life of a fellow-creature in your hands. In reality you have a trinity of lives in your hands. You have three people to consider. This man has a wife. Who stood by him in the hour of poverty? That wife. Did you notice her on the first day? A thin, spare figure came up to that dock and took him by the hand, saying by her presence: "Though all men be against you, though all the world be against you, in my heart there is room for you still." Gentlemen, they say that women are inferior creatures, but in the hour of retribution it may be said of women: "When pain and anguish wring the brow, a

* Dr. George Lamson was indicted for the wilful murder, by aconitine poisoning, of his young brother-in-law, Percy Malcolm John, at Blenheim House School, Wimbledon, Dec. 3, 1881. The motive of the crime was to obtain part of a sum of about £3,000, to which Mrs. Lamson was entitled on her brother's death, under age. The prisoner was convicted, and executed at Wandsworth Gaol, April 28, 1882.

ministering angel thou." She had sworn at the altar to love, honour and obey him. It is well that the compilers of the solemn service put "love" first, for where there is a woman's love, the others follow as a matter of course; and up to this moment she has stood, so to speak, by his side. Gentlemen, if the prisoner be convicted, and his life be sacrificed, what a legacy there is for her! What a reward for all her true nobility, and for all that is softest and best in life—a widowed home, a cursed life, and a poor little child never to be taught to lisp its father's name, its inheritance the inheritance of Cain!—[*Ibid.*]

WILLIAM DIGBY SEYMOUR (1822—1895).

THIS versatile counsellor was the son of an Irish clergyman of the ancienty family of Seymour, of Ballymore Castle. At Trinity College, Dublin, the future advocate took honours in Hebrew and classics, and was elected president of the Historical and Literary Institute. He joined the ranks of the English Bar at the Middle Temple in June, 1846, and soon obtained "a fair share of practice." He succeeded his friend, George Hudson, "the Railway King," as Member of Parliament for Sunderland, and in the House proved himself "a thorough Liberal." Both in the field of politics and at the Bar he evinced a strong faculty for able and spirited speeches. But law and politics were not his only interests. He devoted much time to economics, and in 1851 published an able, and withal patriotic, pamphlet on the subject of the best way of employing capital in the West of Ireland. One of the industries advocated in this brochure was the cultivation of the beetroot for sugar.

As a member of the Historical and Literary Institution of Dublin, Seymour had several years before produced a remarkable essay on the genius and study of rhetoric, and public speaking appears always to have been regarded by him as a subject for careful cultivation and constant improvement. Among the notable political speeches that he delivered was one at Exeter Hall in the spring of 1845 against Peel's proposed Maynooth Grant, which aroused great enthusiasm among the large Protestant audience. His views, however, on public questions would seem to have subsequently undergone a considerable modification, for in 1867 he was chosen, together with Ernest Jones, as one of the counsel for the defence of the three Fenians, Allen, Larkin and O'Brien, the "Manchester Martyrs" of Irish nationalist history. He was called within the Bar in 1861, and nine years later drew up, at the request of the Government, the Admiralty Reform Act. Having lost his seat for Southampton—which he latterly represented—in 1859, he spent several years in vain endeavours to re-enter Parliament, both for that constituency

and for Nottingham, Stockton and South Shields respectively. His services to Liberalism received some acknowledgment in 1889, when he was appointed a County Court Judge, a position which he held till his death at Tynemouth on March 16, 1895.

Let Prejudice not Influence the Main Issue.

Anxious to do my duty by these men, and wishing to the utmost of my power to succeed as their advocate, no amount of professional sympathy with their cause can enable me to forget or will prevent me from taking any opportunity I think right, of declaring that the cause associated with this trial has no sympathy from me, and ought not to receive sanction or encouragement from any man who loves his country. But while I say this, let me also say that I am anxious you should try this case as if you had before you, not five supposed Fenians, but five of your fellow-countrymen, without taint or suggestion of rebellious thought or revolutionary movement. Set aside all considerations of this kind, try the case with the determination that you will, calmly, judicially and prayerfully, do your duty by them. Oh, remember this! If these be Fenians who are on their trial, British justice is on its trial also!

[Address to the jury, Fenian Trial, Manchester, Nov. 1, 1867.]

The Futility of Fenianism.

I speak as the countryman of some, if not all, of the prisoners in the dock. But do not let anyone in Court suppose that on that account I sympathise with their politics. Of all the curses that ever fell on my unhappy country, Fenianism is the blackest and the worst. Famine may desolate and destroy; pestilence may mow down its hundreds or its thousands; returning spring will renew the crops of the earth, and a refreshing atmosphere will subdue the pestilence. But Fenianism is a blighting curse, a cancer, fastening itself on the fairest spots of an otherwise fair island, and looking for its mischief and exerting its influence upon the most vital parts of my native country. Ireland may have wrongs; she may need intelligent reform. Religious differences, social cares and truths and the political divisions of society

undoubtedly disturb the face and injure the prospects of the country. But will Fenianism ever cure these things? Will it give shipping to her deserted quays, bring capital into the country, or revive her industries? Will Fenianism ever enable Ireland wirthily to uphold her dignity, as a helpmate to this country, worthy of the race and enterprise which naturally belong to her? I speak with the feelings of a man who is anxious that his motives and spirit should not be misunderstood.

* * * * *

Do not let it [Fenianism] alarm you. There is nothing in it. It is a mere fungus growth—a cross between Irish discontent and Yankee rowdyism, and there is no comity with it in the hearts or feelings of the loyal Protestants or Catholics of Ireland.

There is not a politician in my native land who has not denounced it; not a capitalist who is not afraid of it, nor an altar throughout the country which has not cursed it! The clergy have spoken of it as, in times of old, the Levitical priesthood and the priesthood of the East spoke: "Go forth into the wilderness, thou leprosy. Unclean! unclean!" I speak this though I know that, in doing so, I am speaking words in direct antagonism to representations which are studiously made, and because I hope these words will reach, and perhaps influence, misguided dupes. Let us hope that this trial, apart from its immediate issue, may have a great moral effect. It cannot fail to do so if, after these men have been tried carefully, you give a discriminating verdict. Let us hope that the mild hand of peaceful legislation may succeed in removing the evils under which Ireland labours.—[*Ibid.*]

LORD RUSSELL OF KILLOWEN (1832—1900).

CHARLES RUSSELL, Baron Russell of Killowen, Lord Chief Justice of England, was the eldest son of Arthur Russell, Esquire, of Seafield House, Killowen, and member of a family claiming relationship with the ducal house of Bedford. The famous Dr. Russell, president of Maynooth, referred to by Cardinal Newman in his "Apologia" as the one to whom he almost "owed his soul," was the future Chief Justice's uncle. After a preliminary education at various schools including St. Vincent's College, Castleknock, young Russell served his articles with a firm of solicitors, and was admitted to practice in 1854. Having acquired a great reputation as a pleader before the County Courts of Down and Antrim, and also as a forcible speaker against the proselytising efforts of some "evangelical" societies, he resolved to qualify for the English Bar. To shorten his terms at Lincoln's Inn, he became an undergraduate at Trinity College, but meantime devoted his attention to law studies in London. He was called to the Bar in Hilary term, 1859, not long after his marriage to Ellen, daughter of Dr. Joseph Mulholland, of Belfast. Almost from the first, Charles Russell, both at the Passage Court, Liverpool, and in the London Courts, was regarded as a man with a great future. Such leaders of the Bar as Serjeants Ballantine and Parry, Mr., later Sir, Henry Hawkins, Q.C. (Lord Brampton), and Sir Robert Lush, found in him a most formidable rival. His powers of cross-examination amounted to positive genius, while in the art of forcibly stating a case to a jury he was said to have surpassed every advocate within living memory. Though his speeches were invariably most impressive, he, unlike most Irish lawyers, did not attach much importance to what he jocularly called "rhetorical fireworks," believing, and rightly, that juries in this country are seldom dazzled by declamation, but, as in the case of most commonsense persons, base their conclusions on solid facts.

In 1872 he became a Queen's counsel, and ten years later declined a judgeship of the High Court. As member of Parliament for Dundalk and, later on, for South Hackney, he identified himself to a certain extent with the aims and policy of the Home Rule party, though his speeches on this and other subjects, while vigorous, were always conciliatory. Honest to the core both as a barrister and as a man, Russell had ever a great horror of fraud and deception of every kind, and much of his labours in the House were directed to devising means for improving the business morality of commercial companies, and in warring against "secret commissions." He was Attorney-General in the Liberal Administrations of 1885 and 1892, and, had he not been a Catholic, there can be no doubt but that he would have been created Lord Chancellor.

Russell's most famous case was the Parnell Commission inquiry in 1888—9. Serious charges of sympathy with, and even condonement of, agrarian outrages in Ireland, had been brought against Parnell and various other Nationalist members by "The Times" —charges resting for the most part on certain letters alleged to have been written by the Irish leader and some of his colleagues. The chief witness for the defendants—the editor of "The Times" and another—was Richard Pigott, a Dublin journalist and adventurer. The cross-examination of this man by Sir Charles Russell has been described as "terrific," the result, of course, being the utter collapse of the perjured witness, followed by his flight, and suicide to escape arrest. The speech with which Russell clinched this triumph is not only a masterpiece of calm and deliberate oratory, but an historical summary of land legislation in Ireland of great value. The same year (August, 1889) he defended Mrs. Maybrick, at Liverpool, on a charge of poisoning her husband with arsenic. His address to the jury—of which some extracts are given at the end of this notice—followed in the main the lines of defence laid down by Serjeant Shee, Montagu Williams and other advocates in similar trials; but though most able, as usual, it failed to save the accused from a capital conviction.

Sir Charles Russell was chosen, with Sir Richard Webster (Lord Alverstone), to represent this country in the Behring Sea Seal-Fishery Arbitration, with reference to the claims of the

United States. Russell's contention that only the rules actually agreed upon by international treaties could be regarded as "International Law" finally prevailed, and judgment was given in favour of Great Britain. In May, 1894, the illustrious advocate became a Lord of Appeal in succession to Lord Bowen, and a few months later, on the death of Lord Coleridge, he took his place as Lord Chief Justice of England. His tenure of that historical judicial position was all too short for him to make a lasting impression, but he filled the office with great force and dignity down to his somewhat premature death on August 10, 1900.

It is as a supreme advocate that Russell's name will go down in legal history. In addition to our previous remarks on the subject, it may be observed that the factor which made most for his success in this respect was the faculty of seizing upon the vital points at issue, and great courage and clearness in presenting these to, or rather forcing them upon, the Court. Though a thoroughly sound lawyer, he was no bookworm, but his deep, practical knowledge of men and things more than compensated for black-letter erudition, and, joined to the commanding talents he possessed, ensured those great professional victories and achievements which, after all, constitute a really successful career.

The Mysteries of Life.

There are some people who think that any fatal occurrence to human life can be accounted for. Man, in his pride of reason, his knowledge of science, his observation and stored experience of the past, can explain everything. Dr. Tidy has said that a post-mortem had shown that his diagnosis of the case had been wrong at first. There are mysteries in human life, mysteries in the agencies that touch the springs of human life, that often even the advanced science of to-day has not fully mastered. Recollect the statement made by Dr. Macnamara and endorsed by Dr. Tidy that they have known cases of gastritis and gastro-enteritis implicating the bowels set up in men from very slight causes indeed. Therefore, upon this part of the case, I have to submit to you that there is in this state of evidence and facts with the contrariety of opinion that has been

expressed—there is submitted to your judgment no safe resting-place on which you can securely and satisfactorily justify to yourselves a finding that this was a death of arsenical poisoning.

[From his address to the jury, Maybrick Case, August, 1889.]

The Impartiality of British Law.

Gentlemen,—I have said all that occurs to me to say on this matter. There is nothing of which the people of this island have a greater right to be proud than that settled order of the people and the respect for the law and administration of the law which the people honestly and heartily entertain —which they entertain because they believe the law to be just, because they believe the law to be honestly administered. And there is no more striking scene to the reflective mind than that which is presented on the trial of a criminal case where the charge is a grave one—a judge who tries with certain hands fairly to hold the scales of justice, and a jury, calm, honest, dispassionate, with no desire except to do justice in the case according to their conscientious belief. To this has to be added the fact that the Crown, representing the law in its executive character, conduct their prosecutions in recent years without exception, not as if a great effort were made, as in private litigation, to wrest a verdict, but only so as to lay, as is the duty of those who represent the prosecution, fully and completely and fairly before the jury all the grounds upon which the opinion of the jury should be asked in determining the grave question of guilt or innocence. In the language of the officer of this Court giving the prisoner in charge to you, he informed you that the prisoner at the bar had put herself upon her country, which country you are. You are in number large enough to prevent—forgive me for suggesting it—the individual views and prejudices or prepossessions of one from affecting all, but in number small enough, limited enough, to preserve to each one of you the undivided sense of individual responsibility. The verdict is to be the verdict of each of you and the verdict of you all. I am not making in this case—let it be clearly understood—an appeal for mercy. You are administering a law which is merciful; you are administering a law which forbids you to pronounce a verdict

of guilty unless all other reasonable hypotheses of innocence can be excluded. And now I end, as I began, by asking you, each one of you, in the perplexities, in the doubts, in the mystery, in the difficulties which surround this case, in view of the contrariety of things and opinions presented to you, upon some points more or less important, can you, can any of you, with satisfied judgment and with safe conscience, say that this woman is guilty? If your duty compels you to do it, you will do it, you must do it. But you cannot, you will not, you must not, unless the whole burthen and facts and weight of the case, fairly and fully considered with honest and impartial minds, drive you, drive you irresistibly to that conclusion.—[*Ibid.*]

The Predisposing Causes of Crime in Ireland.

Now, my Lords, in the next place I have to introduce to your Lordships a statement, historically considered not of political movements, but what I may call for clearness and for convenience a statement of the predisposing causes of Irish crime, and, as far as I shall make historical reference, I shall cite only historical authorities that are not supposed to be in political accord with those for whom I am speaking. . . . But, my Lords, the four grounds, the predisposing causes, are these: the restrictions of Irish commerce and suppression of Irish manufactures; the penal code which, while commercial legislation had on the one hand thrown the people upon the land as their only means of livelihood, on the other hand came in to prevent the bulk of the people acquiring any permanent interest in the land; the third cause, the uncontrolled power of the landlords in the exaction of oppressive rents; and the fourth cause, the general misgovernment of the country, and the consequent distrust of the government which was generated thereby in the Irish mind. My Lords, I am literally within the bounds of truth when I say that all historians, English, Irish and foreign, concur in this opinion, that until a period within the bounds of truth when I say that of the world; that until a period within living memory the government of the country was directed not to the good of the many, but to the maintenance of a privileged few, and proceeded

until a period within living memory upon what has been called, by one distinguished writer, "the detestable principle that to keep Ireland weak was the most convenient way of governing!"

My Lords, I can pass over these subjects lightly, but I must touch upon each of them. To begin with, Ireland was excluded from the benefits of the Navigation Laws; she was shut out, not only from colonial trading, she was actually shut out even from exports to the sister kingdom of Great Britain. Cattle could not be so exported. The result was the cultivation on a large scale of sheep-farms; from that grew rapidly, generally and to important dimensions a woollen trade in Ireland, and when that had grown to a point at which it seemed to threaten English trade, English traders came to the Crown to put it down, and it was put down by the imposition of enormous duties. . . . The penal code not merely deprived the great bulk of the population of the elective franchise, but it excluded them from corporations, the magistracy, the Bar. They could not become sheriffs, solicitors, even gamekeepers or constables. They could not buy or inherit land. . . . The simplest rites of the religion of the multitude were proscribed.

* * * * *

My Lords, I have come to an end. I cannot sit down without expressing the obligation I owe to your Lordships not only for an attentive, but an indulgent hearing. I have spoken not merely as an advocate. I have spoken for the land of my birth. But I feel, and profoundly feel, that I have been speaking for, and in the best interests of, England also, where my years of laborious life have been passed, and where I have received kindness, consideration and regard, which I shall be glad to make some attempt to repay . . . I hope, I believe, that this inquiry in its present stage has served and in its future development will serve more purposes even than the vindication of individuals. It will remove baneful misconceptions as to the character, the actions, the motives, the aims of the Irish people, and of the leaders of the Irish people. It will set earnest minds—thank God there are many earnest and honest minds in the land—thinking for themselves upon this question. It will soften ancient prejudices. It will hasten the day of true union and of real reconciliation between the people of Ireland and the people of Great Britain;

and with the advent of that union and reconciliation will be dispelled, and dispelled for ever, the cloud—the weighty cloud—that has long rested on the history of a noble race and dimmed the glory of a mighty Empire.

[From the opening speech for the defence, Parnell Commission. Third edition. Macmillan & Co., 1889.]

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